GAO FINDINGS ON SUPERFUND CLEANUP

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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GAO FINDINGS ON SUPERFUND CLEANUP

THURSDAY, FEBRUARY 13, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:15 a.m., in room 2154, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Sununu, Shadegg, Snowbarger, Barr, Sanders, Waxman, Fattah, Kucinich, Turner, and Tierney.

Staff present: Mildred Webber, staff director; Todd Gaziano, chief counsel; Larisa Dobriansky, senior counsel; Chip Griffin, professional staff member; Cindi Stamm, clerk; Phil Barnett, minority chief counsel; Phil Schiliro, minority staff director; Elizabeth Mundinger, minority counsel; David McMillen, minority professional staff member; and Ellen Rayner, minority chief clerk.

Mr. MCINTOSH. A quorum being present, the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs will come to order. As I have previously informed the ranking member, Mr. Waxman, we will limit opening statements to the chairman and the ranking member of the subcommittee.

Mr. WAXMAN. Mr. Chairman, it has been the tradition of every subcommittee that I've served on that all Members are given the opportunity for a brief opening statement. Yesterday, I attended the Health and Environment Subcommittee, chaired by Mr. Bilirakis. We had extensive comments by the Members. Each Member was given the courtesy to say what they had to say and they were able to lay out their concerns.

I see no reason why we can't have all Members be afforded that opportunity. If you're going to be calling over there to the left, and he's not wishing to make an opening statement, since he's the only one who can deny your suggestion, that's fine with me. But I would like to say that Members' rights are being ignored.

Mr. MCINTOSH. I'm going to be following the precedent set by Chairman Burton yesterday for the full committee.

Mr. WAXMAN. Mr. Chairman, are you suggesting you're going to have opening statements by the chairman, the ranking member of the subcommittee and then the chairman of the full committee and ranking member of the full committee?

Mr. MCINTOSH. Yes. You're going to get your opening statement. I'm sorry, there was a misunderstanding, both of you will be able to give your opening statements.

The purpose of this hearing is to examine the pace of Superfund cleanups at more than 1,200 Superfund sites from around the country. I wanted to, in particular, thank Chairman Burton for continuing the request of former Chairman Clinger to the General Accounting Office to study this issue. I'm sure that all members of this subcommittee agree with the need to put politics aside and examine the important public health and environmental impacts of this issue.

I know that Mr. Waxman, our full committee ranking member, has been active on environmental issues for much of his career. And although we sometimes disagree on exactly what the best method and the fastest and most effective way to achieve that end is, we both do share the goal of cleaning up the environment. I especially want to thank Mr. Waxman, the ranking member of the full committee, Mr. Sanders, ranking member of the subcommittee and their staff for persuading EPA to reconsider and join us today to testify on the delays in cleaning up Superfund sites.

Now, at the subcommittee's hearing on the Superfund program last year in May, we heard from the Tielmann family. They've been dealing with this issue for about 13 years and counting and it's taken that long for EPA to improperly treat the Superfund site on their farm. It would have been bad enough if the site had remained untouched for all that time, but instead, the three Tielmann children were exposed to heightened levels of asbestos and other dangerous toxins. This is because the existing asbestos on their farm was dug up and not removed. In addition, the truckloads of dirt from another toxic wastesite were dumped on the property as part of the final cleanup. The last I heard, EPA is still studying what to do with the Tielmanns' farm. Now, when innocent children are endangered, EPA needs to admit that there is a problem.

The purpose of today's hearing is to examine the extent of that problem. I want to thank all of the witnesses for their testimony. As most of our witnesses will attest, the goal of fast, fair, and effective cleanups has gotten lost. There are several contributing factors to this delay, endless disputes over what should be done, and litigation over who should pay for it. However, the focus of today's hearing is not so much on the causes of that delay, but on whether the job is getting done at all and in what timeframe.

The most critical question in assessing the problems with the current Superfund program is whether the time to assess cleanup and assess whether a site should be listed has improved, remained the same, or gotten worse since the program began in 1986. When Congress reauthorized the Superfund program in 1986, it set a statutory goal of 4 years to assess a site and decide whether to place it on the National Priority List. In 1986, it took about 4 years to make that determination. GAO's current study, which is based on EPA's own data, shows that it is now taking 9.4 years on average to list a non-Federal site.

In 1986, the average time to clean up a Superfund site that was placed on the National Priorities List was less than 4 years. In 1993, EPA established an expectation of 5 years to clean up a site.

But by 1996, the cleanups were averaging 10.6 years. Once again, that is more than twice the 1993 goal and about three times the average when Superfund was reauthorized in 1986. In 1996, last year, the combined average time to list a site and then clean it up is a staggering 20 years. Now, regardless of the causes, there should be no covering up the fact that something is seriously wrong with the Superfund program.

Based on current trends, things may get worse before they get better. Even if the administration does do a better job, the sheer number of potential Superfund sites is staggering. The total number of sites on the National Priority List as of last November was 1,205. EPA has been adding about 16 sites per year to that National Priority List for the last 4 years, but there are an estimated 1,400 to 2,300 additional sites that potentially should be added. If EPA can only clean up 64 sites per year and is only taking 16 new sites per year, we may never be able to tackle this problem. Man may go the way of the dinosaurs before all the cleanups are done.

If EPA is defensive about the pace of cleanups, then I welcome their testimony on what the different causes of the delays are. I'm sure that past Congresses are partly to blame for enacting a hydra-headed litigation monster that is the Superfund law. And there is certainly enough blame to go around. But I don't think that it is constructive for people to try to evade the hard facts about the cleanup delays by arguing over methodology. GAO has a sound methodology and the only one that compares the same data over the relevant period of years. And I'm very pleased to have their report today, to give us a sense of what the nature of the problem is.

Before we can solve a problem, we must first admit that the problem exists. That is not the sense I get when I read the administration's prepared testimony. EPA's prepared testimony suggests the agency is merely rearranging the decks on what seems to be a floundering ocean liner. Now, I believe the Members of both sides of the aisle and all families living near the Superfund sites would find that unacceptable. In fact, EPA's own figures for 1995 show that less than half of the Superfund budget is spent on direct cleanup efforts. Forty million Americans who live within the 4 mile radius of a toxic wastesite and millions of their children who live there want to know the truth, and they want a program that spends at least as much on cleanups as on administrative and bureaucratic overhead and litigation.

In short, the American taxpayers deserve better, and I look forward to hearing the testimony of all the witnesses. I would now like to recognize our ranking subcommittee member, Mr. Sanders, for an opening statement.

Mr. Sanders, welcome to our committee.

[The prepared statement of Hon. David M. McIntosh follows:]

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

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Statement of Chairman David M. McIntosh
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

February 13, 1997

The purpose of this hearing is to examine the pace of Superfund clean-ups at the more than twelve hundred Superfund sites around the country. I want to thank Chairman Burton for continuing the request that former Chairman Clinger made to GAO to study this issue. I am sure that all of the Members of this Subcommittee agree with the need to put politics aside and examine this important public health and environmental issue. I know that Henry Waxman, our full committee Ranking Member, has been active in environmental issues for much of his career. Although I may sometimes differ with Mr. Waxman on what is the fastest and most effective means to that end, we both share the same goal of cleaning up the environment. I especially want to thank Mr. Waxman and his staff for persuading EPA to reconsider our invitation to testify today about the delays in cleaning up Superfund sites.

At the Subcommittee's hearing on the Superfund program last May, we heard from the Tielmann family about the 13 years and counting that it has taken to improperly treat a Superfund site on their farm. It would have been bad enough if the site had remained untouched for all that time. Instead, the three Tielmann children were exposed to heightened levels of asbestos and other dangerous toxins. This is because the existing asbestos was dug up but not removed from their farm. In addition, truckloads of dirt from another toxic waste site were dumped on their property as part of the supposed cleanup. The last I heard, EPA is still studying what to do. When innocent children are endangered, EPA needs to admit there is a problem.

The purpose of today's hearing is to examine the extent of the problem. I want to thank all the witnesses for their testimony. As most of our witnesses will attest, the goal of fast, fair, and effective clean-ups has gotten lost. There may be several contributing factors to the delay, including endless disputes over what should be done and litigation over who should pay for it. However, the focus today's hearing is not on the causes of the delay but on whether the job is getting done -- and in what time frame.

The most critical question in assessing the problems with the current Superfund program is whether the time to assess and clean-up the average Superfund site has improved, remained about the same, or become worse since 1986. When Congress reauthorized the Superfund program in 1986, it set a statutory goal of four years to assess a site and decide whether to place it on the National Priorities List. In 1986, it took about four years to make that determination. GAO's current study, which is based on EPA's own data, shows that it is taking an average of 9.4

years to list a non-federal site. In 1986, the average time to clean-up a Superfund site that was placed on the National Priorities List was less than four years. In 1993, EPA established an expectation of five years to clean-up a site. But by 1996, cleanups were averaging 10.6 years. Once again, this is more than twice the 1993 goal and almost three times the average when the Superfund was reauthorized in 1986. The combined average time to list a site and clean it up in 1996 is a staggering 20 years. Regardless of the causes, there should be no covering up the fact that something is seriously wrong with the Superfund program.

Based on the current trends, things may get worse before they get better. Even if the Administration can do a better job, the sheer number of potential Superfund sites is staggering. The total number of sites on the National Priority List (NPL) as of last November was 1,205. EPA has been adding about 16 sites per year to the NPL for the last four years. But there are an estimated 1400 to 2300 additional sites that need to be added. If EPA can only clean up 64 sites per year, and it is only taking on 16 new sites per year, we may never tackle the problem. Man may go the way of the dinosaurs before all the clean-ups are done.

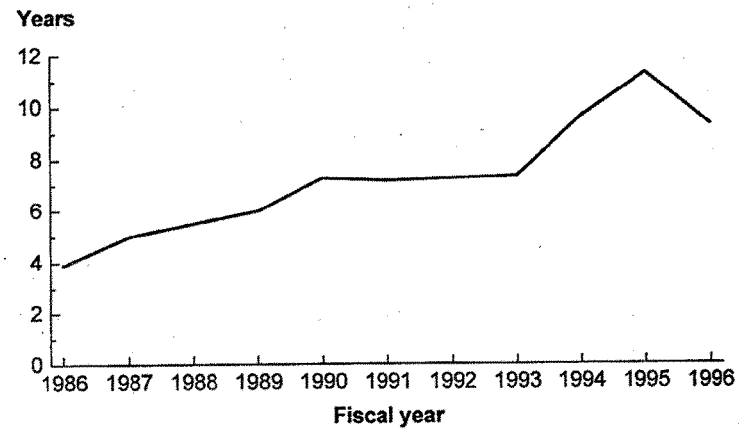
If EPA is defensive about the pace of clean-ups, then I welcome their testimony on what the different causes of the delays are. I am sure past Congresses are partly to blame for enacting such a hydra-headed litigation monster that is the Superfund law. There is certainly enough blame to go around. But I do not think that it is constructive for EPA to try to evade the hard facts about the clean-up delays by arguing over GAO's methodology. It is a sound methodology, and the only one that compares the same data over the relevant period of years. Any statistician can come up with a different methodology if the goal is to hide the relevant numbers and prop-up a failing system. But that kind of tactic suggests to me that *some* at the EPA are more interested in demagoguery and perpetuating the bureaucracy than saving American lives and cleaning up our environment.

Before we can solve a problem, we must first admit that the problem exists. That is not the sense I get from reading EPA's prepared testimony. EPA's prepared testimony suggests that the agency is merely rearranging the deck chairs on a floundering ocean liner. I believe that Members on both sides of the aisle, and all families living near Superfund sites, would find that unacceptable. In fact, EPA's own figures for 1995 show that less than half of the Superfund budget is spent on direct clean-up efforts. The 40 million Americans who live within four miles of a toxic waste site, and the millions children who live there, want to know the truth. And they also want a program that spends at least as much on clean-ups as on administrative overhead and litigation. In short, the American taxpayers deserve better.

I look forward to hearing the testimony of all the witnesses.

GAO

How Long It Took on Average to Place Sites in Superfund

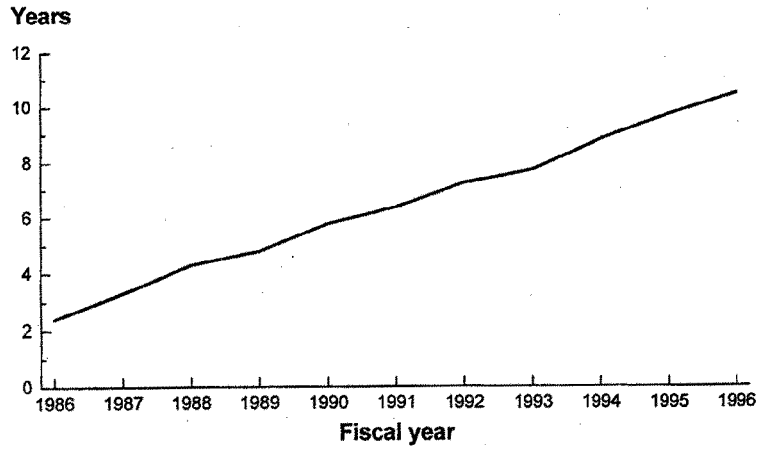


No sites were placed on the NPL in fiscal years 1988 and 1992. Data for fiscal year 1996 exclude three sites that were added to the NPL without undergoing the usual evaluation because they posed imminent public health risks.

Prepared for Chairman David McIntosh, Subcommittee on National [illegible]onomic Growth, Natural Resources, and Regulatory [illegible]fairs

GAO

How Long It Took on Average to Complete Superfund Cleanup Projects



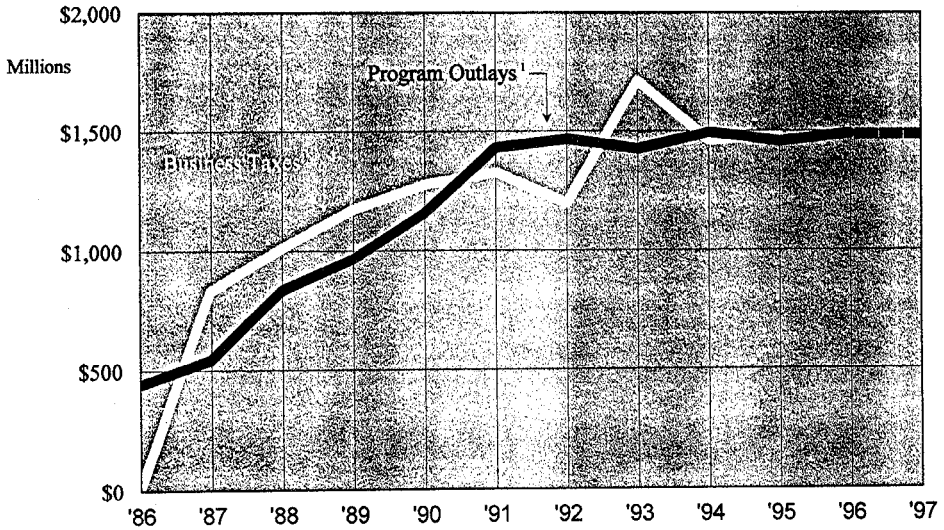
GAO Profile of Superfund Sites

	Number of sites
Total NPL sites (as of 11/96)	1,205
Average additions to NPL (1992-96)	16 per year
Potential additions to NPL	1,400 to 2,300
Construction completed during FY 96	64
Construction completed through FY 96	410

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Superfund Trust Fund Financing, 1986-96

(Non-Federal Facilities)



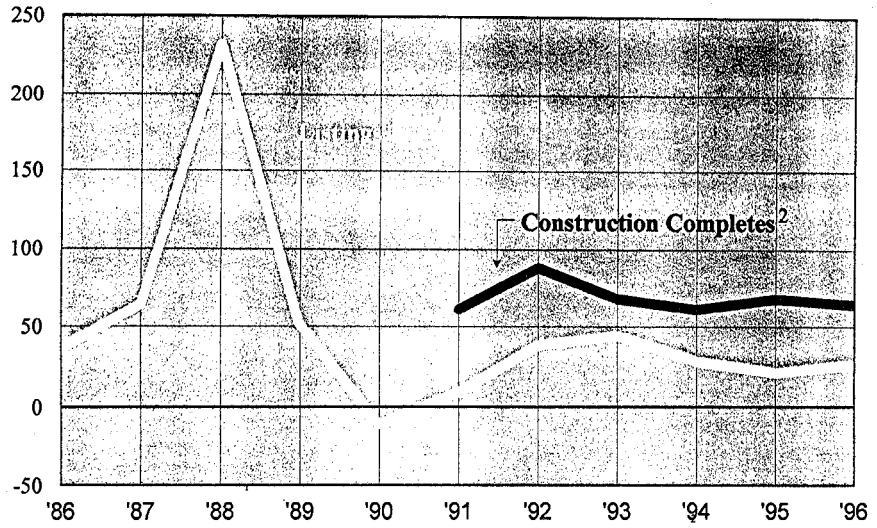
1 Program Outlay data as reported by CBO in "The Total Costs of Cleaning Up Non-Federal Superfund Sites" (1/94). 1995 figure of $1.457 billion is the actual FY95 Superfund budget (post rescissions), plus an unobligated carryover of approximately $125 million. The FY96 figure is taken directly from EPA's End-of-Fiscal-Year-1996-Budget, the 1997 projection is the appropriated amount, plus an anticipated unobligated carryover from the prior year.

iness Taxes figures as reported in the Treasury Department's Superfund Income Statements '1-95.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory A. airs

Superfund Accomplishments, 1986-96

(Non-Federal Facilities)



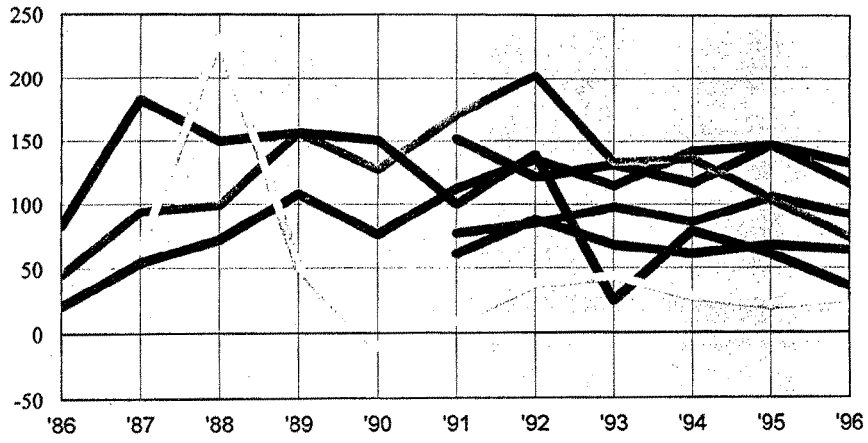
[1] Site listing and construction complete figures include federal facilities. Listing figures include proposed and finalized sites; all data is taken from Federal Register Notices. For 1990, a negative total appears as more proposed sites were made final than new sites proposed. All other accomplishment data taken from EPA Historical Performance Reports unless otherwise noted.

[2] The c tion completes listed in 1991 represent the cumulative 1980-91 total.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory .fairs

Superfund Accomplishments, 1986-96

(Non-Federal Facilities)



[1] Site listing and construction complete figures include federal facilities. Listing figures include proposed and finalized sites; all data is taken from Federal Register Notices. For 1990, a negative total appears as more proposed sites were made final than new sites proposed. All other accomplishment data taken from EPA Historical Performance Reports unless otherwise noted.

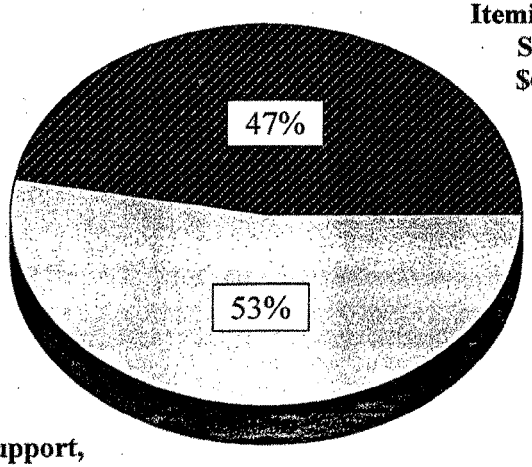
[2] The co. .tion completes listed in 1991 represent the cumulative 1980-91 total. EPA data did not list R 'A completions for 1986-90.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory A..airs

EPA Trust Fund Allocation

FY95 Budget*

Itemized Cleanup Spending: $672.9 mil



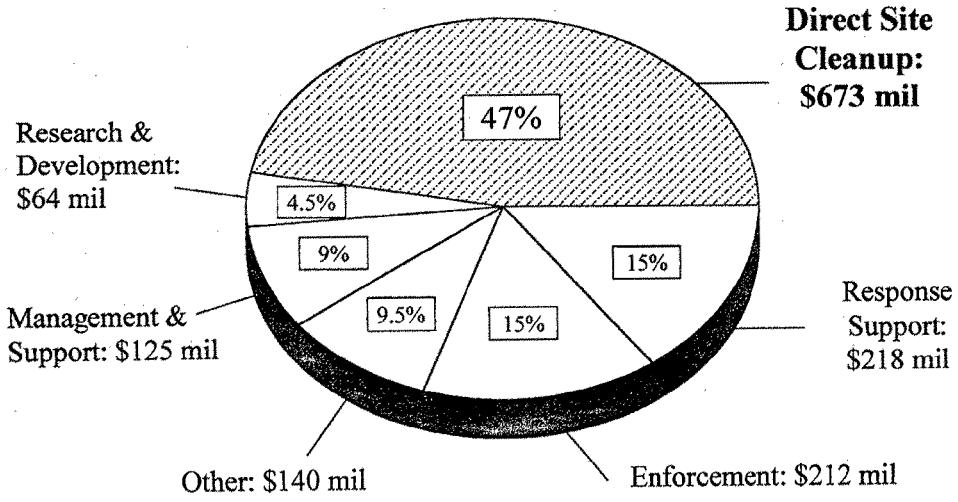
Administrative Management, Support, and Other Non-Cleanup Spending: $758.4 mil

* Data taken directly from the FY95 Superfund Budget as it appeared in EPA's "End of Year FY95 Superfund Historical Performance" Report. The actual FY95 budget was slightly higher ($1.457 billion vs $1.43' on reflected above) per initial rescissions and subsequent add-backs.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

EPA Superfund Allocation: 1995

FY95 Budget*

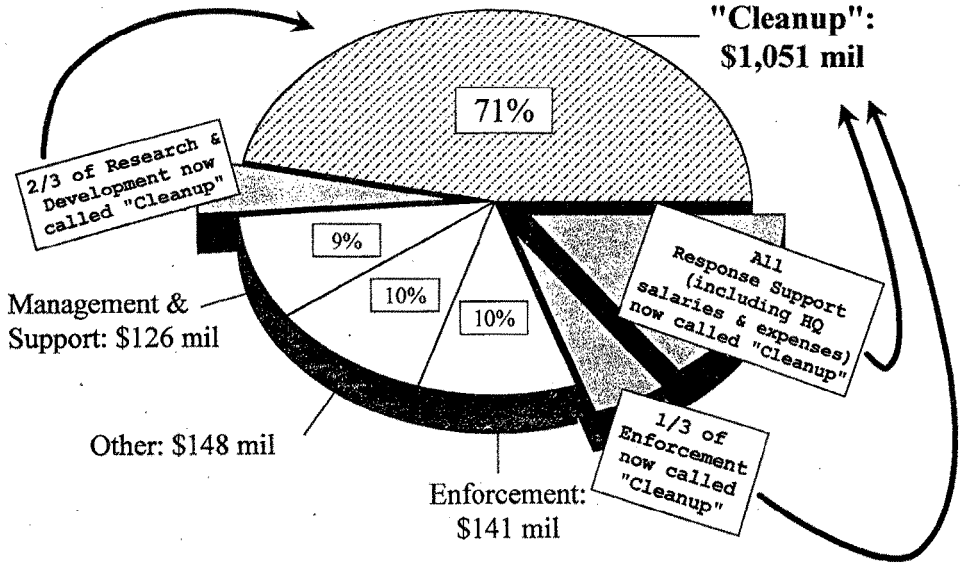


* Data taken directly from the FY95 Superfund Budget as it appeared in EPA's "End of Year FY95 Superfund Historical Performance" Report.
The actual FY95 budget was slightly higher ($1.457 billion vs $1.431 billion reflected above) per initial rescissions and unobligated carryovers.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

EPA Superfund Allocation: 1996

FY96 End of Fiscal Year Budget*

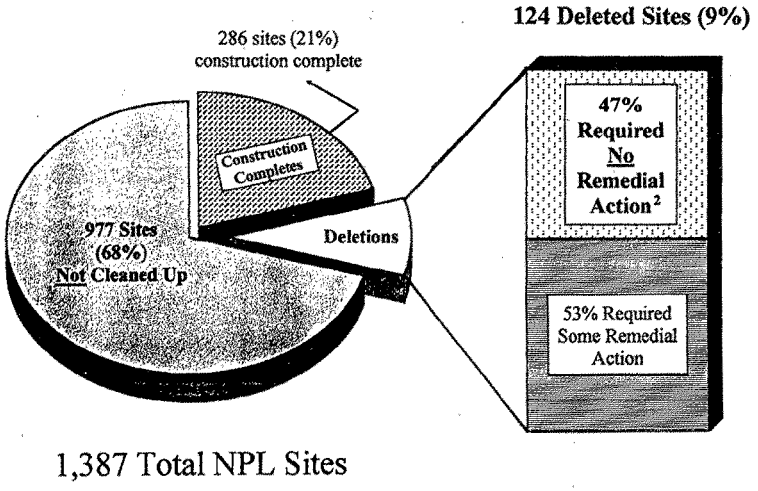


* Data taken directly from the FY96 "Fiscal Year 1996 Superfund Budget.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Superfund Cleanup Progress

1980 - 1996[1]



1,387 Total NPL Sites

[1] As reported in EPA's "Superfund NPL Construction Completions/Deletions Through FY96"; totals as reported by GAO.

[2] Based on GAO's 1993 report "Superfund Cleanups Nearing Completion Indicate Future Challenges", GAO/RCED-93-188. Of the 124 deletions, data was located for 75 sites; of the 47% of these sites which did not rec emedial action, removal actions were performed at 4 sites.

Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory . airs

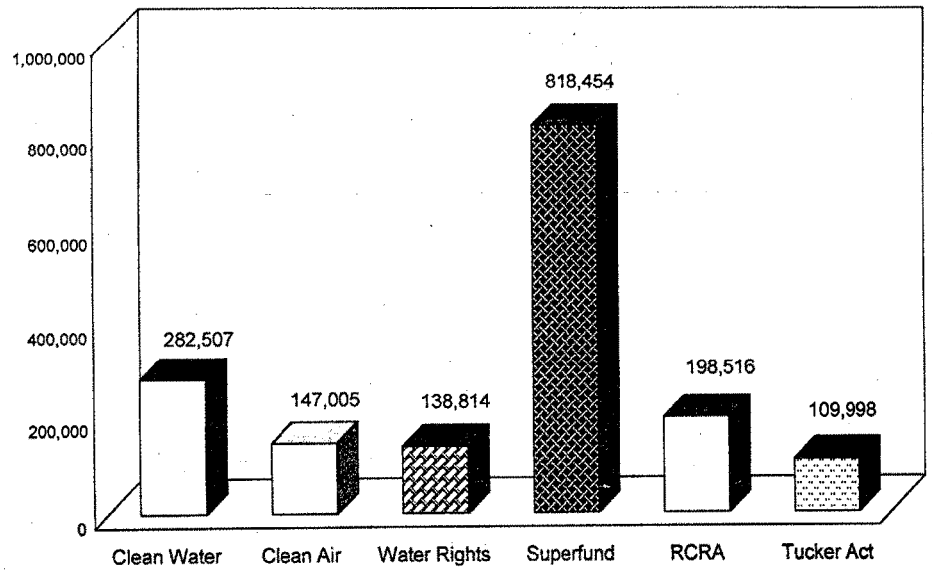
DEPARTMENT OF JUSTICE

ENVIRONMENT and NATURAL RESOURCES DIVISION

DISTRIBUTION OF DIVISION TIME BY HOURS BILLED

FY92 - FY94

(Categories Over 100,000 Hours)



Prepared for Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Mr. SANDERS. Thank you very much, Mr. Chairman. And, Mr. Chairman, thank you very much for holding this hearing today. The State of Vermont, that I represent, is one of the most environmentally conscious States in the country. We are very concerned about toxic dumps that we have in our State and throughout this country and want to see them cleaned up as cost-effectively and as quickly as is possible. And, therefore, I thank you very much for calling attention to this important problem and the whole Superfund program.

Obviously, however, I hope that we can look objectively at the program as it is run today without condemning the program from mistakes made in the past. As you know, early on, EPA administrators under President Reagan ran into many, many problems relating to Superfund and ultimately the chief administrator resigned in disgrace. And while we are all disturbed about what happened in the early 1980's, and don't want to dwell on that issue, I think it is important to bring it into the record. What happened in the past is unfortunate, the fact that EPA administrators started off in such a bad way running the Superfund is unfortunate, but that was yesterday, and today is today.

In the early days of the Superfund, progress reports were abysmal and sites were just not started down the pipeline. And that meant that future administrators inherited that backlog, and that's an important point to be introduced into the record. Superfund, as you know, addresses a large and complicated problem. It is not necessarily apples and apples. Some sites are in terrible condition, difficult to improve, others not so bad. There are different toxic chemicals, different terrains and different communities at each site.

As the EPA gains experience, cleanups are getting faster and more cost-effective. And recently, the Clinton administration adopted major reforms addressing some of the problems that we'll be discussing today.

The general consensus, Mr. Chairman, seems to be that we are doing better. In the last 4 years, EPA has cleaned up 250 Superfund sites, almost double the amount cleaned up in the previous 12 years. Let me repeat that. EPA has cleaned up 250 Superfund sites, almost double the amount cleaned up in the previous 12 years. That seems to me to be a pretty good record. From 1983 through 1992, EPA completed cleanups on an average of fewer than 15 sites per year, while during the first 3 years of the Clinton administration, EPA's average soared to 65 sites per year. That seems to me to be a pretty good improvement.

About 75 percent of Superfund sites are either under construction or are construction-complete; of the approximately 1,300 NPL sites, 418 are construction-complete and another 491 are under construction, and cleanups are now 20 percent faster and 25 percent less expensive than under the Reagan and Bush administrations. Once again, not perfect, but that seems to be a pretty good step forward. Even the large corporations affected by the program seem to agree. In a December 1996 report, an industry group reported, "EPA's track record is substantial, especially in light of the severe obstacles that EPA encountered during fiscal year 1996, as it began implementation of these reforms."

Yet, Mr. Chairman, you say that GAO has come to the opposite conclusion. This disparity of opinion concerns me a great deal. If we are truly interested in taking an objective look at the program and how it is run today, we need to make sure we are asking GAO to look at the current program. Now, if we want to have a hearing, Mr. Chairman, and I think some of us might be interested in doing it, and seeing how Superfund was handled in the early 1980's, we can do it. But if we are interested in looking at how EPA is functioning with Superfund today, let's look at Superfund today.

I understand that this is a difficult issue because of major reforms that have been implemented in the last 5 years. But I don't think it's helpful to confuse the issues with numbers that are not telling the true story. So this will be an interesting hearing for all of us who want to make sure that the Superfund cleanup takes place as cost-effectively and as rapidly as we possibly can.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Bernard Sanders follows:]

OPENING STATEMENT OF BERNARD SANDERS (I-VT)
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

HEARING ON GAO FINDINGS ON SUPERFUND CLEANUP

FEBRUARY 13, 1997

Mr. Chairman, thank you for holding this hearing today. The state of Vermont is one of the most environmentally conscious states in the nation. Unfortunately, we have our share of toxic waste dumps that need to be cleaned up. Therefore, I thank you for holding this hearing on the Superfund program.

However, I hope that we can look objectively at the Program as it is run today without condemning the program for mistakes made in the past.

Early on, the EPA Administrator under Reagan ran into a lot of problems relating to Superfund and ultimately resigned in disgrace. Progress reports were abysmal and sites were just not started down the pipeline. This meant that future Administrators inherited her backlog.

Superfund addresses a large and complicated problem. There are different toxic chemicals, different terrains, and different communities at each site. As the EPA gains experience, cleanups are getting faster and cheaper. And, recently, the Clinton Administration adopted major reforms addressing some of the problems we'll be discussion today.

And the general consensus seems to be that we are doing better:

* In the last four years, EPA has cleaned up 250 Superfund sites, almost double the amount cleaned up in the previous

12 years,
* From 1983 through 1992, EPA completed cleanups on an average of fewer than 15 sites per year while, during the first three years of the Clinton Administration, EPA's average soared to 65 sites per year,
* About 75% of Superfund sites are either under construction or are construction complete [- of the approximately 1300 NPL sites, 418 are construction complete and another 491 are under construction], and
* Cleanups are now 20% faster and 25% cheaper than under the Reagan and Bush Administrations.

Even the large corporations effected by the program agree. In a December 1996 report, an industry group reported, quote, "[EPA's] track record is substantial, especially in light of the severe obstacles that EPA encountered during fiscal year 1996 as it began implementation of these reforms."

Yet, Mr. Chairman, you say the GAO has come to the opposite conclusion. This disparity concerns me very much.

If we are really interested in taking an objective look at the Program and how it is run today, we need to make sure we are asking GAO to look at the current program. I understand that this is difficult because major reforms have been implemented in the last five years, but I don't think it's helpful to confuse the issue with numbers that are not telling the real story.

Mr. MCINTOSH. Thank you, Mr. Sanders. I look forward to serving with you on this subcommittee.

Mr. SANDERS. So do I.

Mr. MCINTOSH. And I look forward to getting the data out on the Superfund issues. Before we turn to Mr. Waxman for his opening statement, let me welcome the new members of the subcommittee who are here. Mr. Kucinich, welcome.

Mr. KUCINICH. Good to be here.

Mr. MCINTOSH. And Mr. Snowbarger, welcome, and also our new vice chairman, welcome, I hope you will enjoy being on this committee, Mr. Sununu from New Hampshire. The staff mentioned you don't have an opening statement at this time, particularly?

Mr. SUNUNU. No.

Mr. MCINTOSH. OK. Thank you. Mr. Waxman, for your opening statement.

Mr. WAXMAN. Mr. Chairman, I've been a Member of Congress for 22 years. During that time we've had Republican administrations and Democratic administrations, and the traditions of the House and the rules have always required that we treat people fairly. If it's an administration witness, you try to put them on first. If it's a colleague who wishes to testify, invariably, we put the colleague on first, because our colleagues have other business. When Members come to a hearing, all Members have been afforded the right for an opening statement.

Mr. Chairman, we received notice of this hearing that was going to be on the GAO report, which I think is a very flawed report, and when we first heard about the hearing, the Environmental Protection Agency wasn't going to testify. We thought that was quite inappropriate and worked with you to encourage EPA to come and testify so we would have a balanced hearing. We also indicated, Mr. Chairman, that we wanted to bring in some witnesses that were critical of the GAO and requested those witnesses.

Well, evidently, now that the chairman sees that there is going to be some criticism of the point of view that he wants to advance, he's come up with some witnesses that he wants to put on, but we haven't received notice about these witnesses appropriately under the rules and under rule 2, it says, "Every member of the committee, unless prevented by unusual circumstances, shall be provided with a memorandum at least 3 calendar days before each meeting or hearing explaining (1) the purpose of the meeting; and (2) the names, titles, backgrounds, and reasons for appearance of any witnesses." And we didn't get that notice under the rules.

I don't know what unusual circumstances there can be that would require that we bend the rules. There's another rule that says that we get testimony at least 24 hours in advance. We didn't get the testimony 24 hours in advance.

Now, ordinarily if you've got a hearing, you try to let the witnesses testify, and most people will not be a stickler to the rules, but when I walked in today, Mr. Chairman, you indicated you didn't want Mr. Pallone to testify first. You didn't want Members to be able to make opening statements. You wanted to be sure that the witnesses who agreed with you get to testify first; those happen to be a panel of witnesses whose names we never received in advance and whose testimony we did not receive in the appropriate

timeframe. And then you wanted to have our witnesses at the very bottom, rather than have them maybe together in a panel.

I'm making a record, Mr. Chairman, that I think that what we have is a breakdown in the comity in which Members ordinarily get together to try to work out what is a fair hearing where all sides can be aired.

Let me talk about the issue before us, Mr. Chairman; we're going to hear some testimony on how quickly we have been listing and cleaning up toxic wastesites, and I appreciate the fact we're holding this hearing, because we're frustrated by stories of long, drawn-out cleanups and we all want sites cleaned up quickly. On the other hand, we need to put the testimony we hear today in perspective. It's my understanding that the GAO's analysis is based on a methodology that is flawed. We need to make sure that we do not condemn the program as we know it today for the mistakes made in earlier years, especially when the current administration has adopted reforms that address these problems.

Sixty-eight million people, including 10 million children, live within 4 miles of a toxic wastesite. The Superfund program sets up an aggressive plan for listing and cleaning up these sites. Unfortunately, during the early days of Superfund, in the 1980's, the program was largely ignored by those in charge of running it. Rita Lovell, the Republican-appointed EPA assistant administrator who first ran this program, went to jail for lying to Congress about the Superfund program and the first EPA administrator charged with managing Superfund, Ann Burford, resigned in disgrace in connection with the same controversy.

A 1983 EPA management review concluded that, "The Agency never mobilized its full resources to implement the Superfund program in a coordinated way . . . Top EPA policymakers at headquarters were primarily concerned with 'prudent fund management,' [which] had a significant dampening effect on aggressive front-line cleaning-up activities through the application of restricted criteria for Federal action."

Because of this early neglect, future administrations inherited a tremendous backlog of sites that had not yet been listed or cleaned up.

In stark contrast, the Clinton administration adopted wide-ranging reforms that directly address the long-standing problems of long, drawn-out cleanups, including: reducing the delay caused by litigation by reaching settlement with thousands of de minimis parties (14,000) shortening the time it takes to study remedies by starting with a presumptive remedy at many sites, and fully implementing the Superfund accelerated cleanup model (SACM), which promotes expedited removals of dangerous toxic waste. We will be releasing a minority staff report on the progress made.

The progress report on these reforms is impressive: In the last 4 years, EPA has cleaned up 250 Superfund sites, almost double the amount cleaned up in the previous 12 years. From 1983 to 1992, EPA completed cleanups on an average of fewer than 15 sites per year, while during the first 3 years of the Clinton administration, EPA's average soared to 65 sites per year. About 75 percent of Superfund sites are either under construction or are construction-complete. Of the approximately 1,300 NPL sites, 418 are con-

struction-complete and another 491 are under construction. And cleanups are now 20 percent faster and 25 percent cheaper than under the Reagan and Bush administrations.

In fact, a group of large corporations that are interested in Superfund reforms reported in the December 1996 report, "EPA's track record is substantial, especially in light of the severe obstacles that EPA encountered during fiscal year 1996 as it began implementation of these reforms."

Today, Mr. Chairman, we're going to hear some testimony from the GAO about the Superfund program and how quickly we have listed and cleaned up sites. Let's keep in mind that the Superfund program today is a very different program than the program we had in the 1980's. As we look forward and consider what changes still need to be made to improve the program, we must recognize the tremendous progress that has been made in the last 4 years and we need to make sure that we do not inappropriately condemn the Clinton reforms for the neglect of earlier administrations.

Mr. Chairman, this hearing is an appropriate one for our subcommittee, the issue is an important one for us to evaluate in a fair manner. I would never reject the idea of witnesses coming in to say what they have to say, even though I might disagree with them. I think it's inappropriate to have the rearrangement of the order of witnesses to try to have the witnesses that agree with the Chair up front and the witnesses that disagree with him down on the bottom. I think that this hearing has not been handled the way it should have been, and I say that with a great deal of regret, and I want the record to reflect it.

I yield back the balance of my time.

[The prepared statement of Hon. Henry A. Waxman follows:]

OPENING STATEMENT OF REP. HENRY A. WAXMAN
RANKING DEMOCRATIC MEMBER
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

HEARING ON GAO FINDINGS ON SUPERFUND CLEANUP

FEBRUARY 13, 1997

Mr. Chairman, today we are going to hear some testimony on how quickly we have been listing and cleaning up toxic waste sites. I thank you for having this hearing because we are all frustrated by stories of long drawn out cleanups and we all want sites cleaned up quickly.

On the other hand, we need to put the testimony we hear today in perspective. It is my understanding that the GAO's analysis is based on a methodology that may be flawed. We need to make sure that we do not condemn the program as we know it today for the mistakes made in earlier years - especially when the current Administration has adopted reforms that address those problems.

68 million people - including 10 million children - live within 4 miles of a toxic waste site. The Superfund Program sets up an aggressive plan for listing and cleaning up these sites.

Unfortunately, during the early years of Superfund in the 1980's, the program was largely ignored by those in charge of running it. Rita Lavelle, the Reagan-appointed EPA Assistant Administrator who first ran the program, went to jail for lying to Congress about the Superfund Program. And the first EPA Administrator charged with managing Superfund, Anne Burford-Gorsuch, resigned in disgrace in connection with the same controversy.

A 1983 EPA management review concluded that, quote, "the Agency never mobilized its full resources to implement the [Superfund] program in a coordinated way... [T]op EPA policy makers in Headquarters were primarily concerned with 'prudent fund management,' ... [which] had a significant dampening effect on aggressive front-line cleanup activities ... through the application of restrictive criteria for Federal action."

Because of this early neglect, future administrations inherited a tremendous backlog of sites that had not yet been listed or cleaned up.

In stark contrast, the Clinton Administration adopted wide-ranging reforms that directly address the longstanding problem of long drawn-out cleanups, including:

* reducing the delay caused by litigation by reaching settlement with thousands of de minimis parties (14,000),
* shortening the time it takes to study remedies by starting with a presumptive remedy at many sites, and
* fully implementing the Superfund Accelerated Cleanup Model (SACM) which promotes expedited removals of dangerous toxic waste. We will be releasing a minority staff report on the progress made.

The progress report on these reforms is impressive:

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* From 1983 through 1992, EPA completed cleanups on an average of fewer than 15 sites per year while, during the first three years of the Clinton Administration, EPA's average soared to 65 sites per year,
* About 75% of Superfund sites are either under construction or are construction complete [- of the approximately 1300 NPL sites, 418 are construction complete and another 491 are under construction], and
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In fact, a group of large corporations that are interested in Superfund reforms reported in a December 1996 report that, and I quote, "[EPA's] track record is substantial, especially in light of the severe obstacles that EPA encountered during fiscal year 1996 as it began implementation of these reforms."

Today, Mr. Chairman, we are going to hear some testimony from the GAO about the Superfund Program and how quickly we have listed and cleaned up sites. Let's keep in mind that the Superfund Program today is a very different program than the program we had in the eighties. As we look forward and consider what changes still need to be made to improve the Program, we must recognize the tremendous progress that has been made in the last four years. And we need to make sure that we do not inappropriately condemn the Clinton reforms for the neglect of earlier Administrations.

Superfund Progress Report

Prepared by the Minority Staff
Committee on Government Reform and Oversight
U.S. House of Representatives

February 13, 1997

Superfund Progress Report
February 13, 1997

A Staff Report, Minority Staff
Committee on Government Reform and Oversight

This minority staff report of the Committee on Government Reform and Oversight describes the progress that the U.S. Environmental Protection Agency (EPA) has made in the past four years to reform the Superfund program.

Executive Summary

The Superfund hazardous waste cleanup program was created in 1980 to address the threat to public health created by the improper disposal of toxic waste. The program suffered from administrative neglect -- and in some respects hostility -- during its early years. Despite this, the program has remained at the forefront of the nation's environmental priorities, primarily because of the large numbers of Americans personally affected by it. Sixty-eight million people live within four miles of a toxic waste site.

The Superfund program is widely considered a far more effective program today than it was in the past, due largely to administrative reforms intended by EPA to create a "faster, fairer, more efficient" Superfund. In the last four years, EPA has cleaned up 250 Superfund sites, more than the amount cleaned up in the previous 12 years. In addition, there are 491 sites with cleanup construction underway, compared to 380 sites in December 1992. The pace of cleanup is expected to accelerate even further, given the continuing improvement of the Superfund program's administrative infrastructure. This is true despite the perennial funding shortfalls: EPA estimates that $300M of cleanup construction and removal activities, that are otherwise ready to begin, will not begin in FY 1997 because of limited appropriations.

History of Superfund

The Superfund hazardous waste cleanup program was created by the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980 (CERCLA, P.L. 96-510). Major revisions were made by the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499).

In its early years, Superfund was plagued by mismanagement and a "go-slow" approach. A 1983 EPA management review concluded that "the Agency never mobilized its full resources to implement the [Superfund] program in a coordinated way.... A common perception, especially in the Regions, was that top EPA policymakers in Headquarters were primarily concerned with 'prudent fund management,'... [which] had a significant dampening effect on aggressive front-line cleanup activities in the Regions through the application of restrictive criteria for Federal action."

In fact, Rita Lavelle, the Reagan-appointee who first ran the program, went to jail for misleading Congress about the Superfund program, and her superior, EPA Administrator Anne Burford-Gorsuch, resigned in connection with the same controversy.

Despite the early challenges, the program continued to be one of the nation's top environmental priorities, primarily because it touched the lives of so many people. Sixty-eight million Americans, of which 10 million are children, live within four miles of a toxic waste site.

The Superfund Process

There are two types of Superfund responses: short-term "removals" to mitigate emergency situations, and long-term "remedial actions" to clean up sites that have been placed on the National Priorities List (NPL). The term "Superfund site" generally refers to a site on the NPL.

The Superfund process can be thought of as occurring in two phases, listing and cleanup. The listing process begins when the site is identified and entered into the CERCLIS tracking database, with "removal" of particular hazards performed if necessary to mitigate emergencies and remove the source of contamination. A Preliminary Assessment (PA) is then conducted to see if a site inspection and ranking is warranted. The Site Inspection (SI) is conducted to gather data to rank the site

under the Hazard Ranking System (HRS). If the site receives a sufficiently high score under the HRS, it may be proposed for listing and then listed by regulation on the NPL. (Provisions in the FY 1995 Rescissions Bill and in the FY 1996 Appropriations Bill modified this by allowing sites to be proposed only with the concurrence of the state governor.)

The cleanup process begins with a detailed Remedial Investigation of the NPL-listed site and of the wastes present, followed by a Feasibility Study that examines alternative cleanup approaches. (These two steps are usually referred to together as the "RI/FS.") EPA decides which alternative to pursue, making a Remedy Selection, and then EPA or its designee (often the Army Corps of Engineers) prepares specifications and drawings for the selected remedy, known as Remedial Design. Once Cleanup Construction is completed, it may be followed by a requirement to operate, maintain, or monitor the site for several years. EPA deletes the site from the NPL when no further action is appropriate.

Recent Progress

The Superfund program today is widely considered a far more effective program than it was in the past, due largely to three rounds of administrative reforms intended by EPA to create a "faster, fairer, more efficient" Superfund. The reforms are aimed at making basic permanent changes in the Superfund program, ranging from national programmatic changes to changes impacting individual sites at nearly every stage of cleanup and enforcement.

While it is too soon to make a complete assessment of the reforms, the early returns are positive. In the last four years, EPA has cleaned up 250 Superfund sites, more than the amount cleaned up in the previous 12 years. As of the end of FY 1996, there are 418 construction completions (almost one third of NPL sites) and 491 sites with construction underway, compared to 155 construction completions and 380 sites with construction underway as of December 1992.

Also since 1992, EPA has "archived" nearly 30,000 sites, removing them from the CERCLIS tracking system, thus removing the Superfund stigma from them; settled out with over 9,200 de

minimis parties who were primarily small land owners and small businesses; established a National Remedy Review Board which has proposed 12 remedy decisions at 11 sites, for an estimated future cost reduction of $15-30M; identified over 30 potential sites for updated remedy decisions using new advances in technology, for an estimated future cost reduction of over $200M; proposed or piloted Community Advisory Groups at 23 sites; established 76 Brownfields Projects, awarding up to $200,000 per pilot to assist economic redevelopment in these non-NPL toxic waste sites; piloted allocating the liability between 500 potentially responsible parties at 10 NPL sites, which should greatly reduce the litigation between the parties; and established policy directives standardizing or streamlining nearly every aspect of the Superfund program.

An assessment of the sites cleaned up to date shows that the average length of time from listing on the NPL to Construction Cleanup has been dropping steadily (see Figure 1). The pace and effectiveness of the program are expected to accelerate further as these reforms become routine.

Remaining Challenges

Despite the progress, the following particular challenges remain.

Limited Appropriations constrain the pace of cleanup. EPA estimates that $300M of cleanup construction and removal activities that are otherwise ready to begin, will not begin in FY 1997, because of limited Appropriations and Congressionally-mandated spending which divert funding from direct site cleanup.

Partnership with the states remains a balancing act. EPA's efforts to work in partnership with the states can have the effect of slowing the process. Provisions in both the FY 1995 Rescissions Bill and the FY 1996 Appropriations Bill required EPA to receive a state governor's concurrence before listing a site on the NPL. These provisions were generally consistent with EPA's efforts to work more closely with the states in cleaning up toxic waste sites, giving states the flexibility to use the Federal Superfund cleanup process as a last resort, used only for the most intractable sites.

In FY 1996, for example, while EPA listed 16 sites on the NPL, the Agency was asked by state governors not to list another 13 sites and awaited governors' decisions on over fifty more sites. While these statistics reflect the closer working relationship between EPA and the states, delaying listing may delay final cleanup.

EPA needs to "benchmark" the appropriate amount of time needed to list and cleanup a site effectively. There is no general agreement on the time necessary to effectively and efficiently complete the stages of the listing and cleanup process. EPA and its stakeholders need to assess their experience with the various reforms and establish a benchmark against which to measure the pace of individual cleanups.

EPA needs to reexamine the time involved in Cleanup Construction. While EPA reforms have addressed nearly every phase of the Superfund program, no steps have been taken specifically to shorten the duration of Cleanup Construction.

Mr. MCINTOSH. We'll move now to the witnesses. Let me state at the beginning, though I have a very different philosophy and I think this whole Congress has a different philosophy than the past 40 years, that it is perhaps best for us to hear from citizens of the United States outside of Washington first and then have the Government listen to itself about problems. And for that reason, I intend always to have panels with citizen witnesses come first and then Government witnesses.

Now, Representative Pallone has asked if he could go first today, because he's got another mark-up over on the Commerce Committee, and in order to accommodate his time, I'm happy to move him up from the testimony with John Mica later, and we'll hear from John later on in the hearing.

So with that, thank you for coming by, Representative Pallone. I appreciate you spending time to come and share your experiences on this subject with us. And let me now turn it over to you for your statement.

STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. And I also want to thank the ranking members, Mr. Waxman and Mr. Sanders also for the opportunity to testify today.

As you know, I am a New Jersey resident and represent the Sixth District in New Jersey, and I'm very familiar with the Superfund's highs and lows. New Jersey has 116 sites on the National Priority List, more than any other State in the country, and my district alone contains 10 Superfund sites. However, I'm here basically to tell you that I'm pleased about the EPA's extensive Superfund presence in New Jersey. I know that sounds a little strange, but the fact is that there are more than 7,000 known contaminated sites in our State.

If you look at the State sites, it's obviously a lot more extensive than the Federal Superfund sites. And for years on a bipartisan basis, our State government has worked hard to find and remediate toxic sites throughout New Jersey. But we can't do much of it on our own, and that's why we're pleased that there is a Federal program that is cleaning up the sites in New Jersey and why I'm particularly pleased that Superfund is working, and I stress, is working in my district.

In New Jersey almost 70 percent of our 116 sites are either being cleaned up or are cleaned up. A great number of the sites have not been delisted, only because long-term monitoring is still ongoing there, because long-term treatment of ground water is still ongoing. But I want to stress again that the Superfund program is working in New Jersey. In my State, EPA and our State government work hand-in-hand to save people's lives and protect their health. And I just wanted to give you an example: At the Grand Street Mercury Site in Hoboken, the local and State departments of health, together with the EPA, took swift action to protect the lives of 34 people living in a building that was so contaminated with mercury that residents were exhibiting early poisoning symptoms.

Let me tell you, mercury pollution is sort of a pet concern of mine, because it is such an extensive problem in New Jersey, and

I think many of you know the very damaging effects that mercury pollution can have. Today, the EPA is working with the State to both remediate that site in Hoboken, that I mentioned and to provide for shelter for the evacuated residents.

Mr. Chairman, I hope that today's hearing will have the positive outcome of illuminating ways to speed up cleanups that truly protect both human health and the environment. Let me say that I understand that there have been some problems with Superfund and with some individual site cleanups, and each of us can talk about that, but let's be honest and acknowledge that those problems were in many respects due to some miscalculations on the part of Congress and past administrations. For instance, it's clear that in writing the original Superfund statute, Congress greatly underestimated the original size and complexity of the toxic waste problem in this country. And my colleagues, the ranking members, have also mentioned, which I think is true, that the program was grossly mismanaged during its crucial development phases by former EPA officials.

The truth is that the Superfund program is a very complicated answer to a complex problem, and, however, many of the complaints that are often repeated about Superfund stem more from a lack of understanding about the nature of environmental pollution and remediation and, I think, unrealistic expectations about Superfund. What many fail to recognize is the sheer volume and complexity of the National Priorities List, the contamination at any given site on the NPL, and the need to develop a whole new generation of technology just to treat the contamination.

What I wanted to do today, in the last few minutes here before I conclude, is to talk about a couple of Superfund success stories, and maybe that's appropriate. I can begin by talking about one in my own district that's very close to my heart. This is the Chemical Insecticide Corp., site in Edison, NJ, and, in fact, today the EPA is going to announce that the offsite cleanup is completed at this site.

The CIC site manufactured pesticides from 1958 through 1970. As a result of CIC's operations, the site became heavily contaminated with arsenic, organic pesticides, herbicides and other hazardous substances. This was basically the product of Agent Orange for the Vietnam war. Nearly 77,000 people live within a 3 mile radius of this site in New Jersey, however, of real concern to residents and me was the contamination that migrated offsite to an unnamed stream and the Mill Brook. Both of these are used for recreation by local residents, particularly children. Because we believed that the offsite pollution posed a real threat to the health of Edison, NJ, I wrote to the EPA in December 1994 urging the agency to ensure full and swift remediation of all offsite contamination. By March 1995, EPA had signed a record of decision on the offsite contamination and by July of that year, EPA had begun removing what was to amount to a total of 13,300 tons of contaminated soil.

EPA completed that removal in December, and the agency has also back-filled the excavated areas, restructuring and stabilizing the stream beds, the banks, and planting thousands of trees and shrubs. And I'm happy to announce today, this is really being announced today at this hearing, that the EPA will declare the offsite

cleanup complete. So in only 2 years the EPA has not only responded to our request, but actually completed the offsite cleanup.

And I mentioned mercury contamination of a site in New Jersey earlier, but this is my other example, if the committee would bear with me. The best example of EPA's work in addressing mercury contamination is at the site that's called the LCP site in Brunswick, GA. This is an industrial site that had many environmental problems and did not come into compliance with the law when ordered to on various occasions by the State of Georgia. The State actually filed suit to close the facility. It's a dangerous site by any standards. Between 1980 and 1994, 380,000 pounds of mercury literally disappeared into thin air, into the atmosphere. The site is also contaminated with lead, PCBs and barium.

And as I've noted before, States can't always get the job done on their own. They often lack the expertise or the funds to cope with toxic threats. This was clearly the case with the LCP site. Within a day of the facility's closure, the State of Georgia asked EPA to come in to deal with the threat. That was 3 years ago. Almost immediately EPA began a removal action to mitigate the threat to the surrounding people and environment in addition to undertaking the removal action within 1½ years, EPA proposed the site for NPL listing and listed the site less than a year later.

And let me just quickly describe what they did, because I think the sheer volume of EPA's work at this site is mindboggling. Since February 1994, EPA has removed 450,000 pounds of mercury, 130,000 tons of contaminated waste, and 20 tons of asbestos. It has demolished the main process building and decontaminated 75,000 tons of steel and building debris. The agency has also treated over 30 million gallons of contaminated waste water and removed 120,000 gallons of contaminated oil from the site. The sheer magnitude of it is really mindboggling.

Perhaps the most impressive thing is EPA's work with a developer at the site to tailor the cleanup to the future use of the LCP site, because ultimately that's what we want to see these sites used for new purposes, and because of the EPA's work, a shipbuilder is already looking to purchase the site and begin construction of dry docks on an area that is already cleaned up. This holds the promise of bringing some 300 high-skilled jobs to a site that the State of Georgia once tried to shut down.

Now, I use those two examples, but there are many more examples like that. And, as has been pointed out, particularly in the last few years, the pace of cleanup has accelerated.

In closing, I just hope that my testimony provides some insight into the bright side of the Superfund program and into some of the complexities that necessarily arise from such a complex undertaking as toxic waste cleanup. If I haven't made it clear enough, my message to you and the American people is that Superfund, while not perfect, does work. In fact, it often works so well and there are people in communities that had a very positive experience with the program and would continue to welcome the EPA's efforts to help safeguard their well-being and restore their lands to productive use.

I know that you're going to spend a lot of time on this issue, and I know that the Commerce Committee, that I'm a member of, will

also be spending a lot of time on it, but the bottom line is, whatever we do with the program, we have to do it in a way that improves it, but understand that the program right now is very successful in cleaning up sites.

And, again, I thank you for your attention and for the opportunity today.

[The prepared statement of Hon. Frank Pallone, Jr., follows:]

STATEMENT OF THE HON. FRANK PALLONE, JR.
HEARING BEFORE THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS
ON
GAO'S SUPERFUND REPORT

I want to thank you, Mr. Chairman, for allowing me to testify today. I also want to thank the Ranking Members of the Committee and Subcommittee: Mr. Waxman and Mr. Sanders.

For the record, I am Rep. Frank Pallone, Jr. of New Jersey's Sixth District and a member of the Commerce Committee which has jurisdiction over Superfund. As a New Jersey resident and Representative, I am intimately familiar with Superfund's highs and lows. New Jersey has 116 sites on the National Priorities List -- more than any other in the country. My district alone contains some 10 sites.

However, I'm here to tell you that I'm pleased about EPA's extensive Superfund presence in New Jersey. I know that sounds strange, but the fact is that there are more than 7,000 known contaminated sites in New Jersey. They are known because we looked for them. We wanted to find them. We want to clean them up. For years, on a bipartisan basis, our state government has worked hard to find and remediate toxic sites throughout New Jersey. That's because we know that what we don't know can hurt us and our families. I need only point to the infamous Tom's River Cancer Cluster to make my case.

But our state can only do so much on its own, and that's why we are pleased that there is a Superfund program that is cleaning up sites in New Jersey, and why I'm particularly pleased that Superfund is working in my district.

In New Jersey, almost 70 percent of our 116 sites are either being cleaned up or are cleaned up. A great number of the sites have not been de-listed only because long term monitoring is still ongoing or because long term treatment of ground water is still ongoing. Maybe that's why in my district and throughout my state, residents ask for EPA to come in and investigate or take over the management of a site.

In New Jersey, EPA and our state government work hand in hand to save people's lives and protect their health. For instance, at the Grand Street Mercury Site in Hoboken the local and state departments of health together with EPA and ATSDR took swift action to protect the lives of 34 people living in a building that was so contaminated with mercury, that residents were exhibiting early poisoning symptoms. Today, EPA is working with the state to both remediate that site and to provide for shelter for the evacuated residents.

Mr. Chairman, I hope that today's hearing will have the positive outcome of illuminating ways to speed up cleanups that truly protect both human health and the environment. Let me say, that I understand there have been some problems with Superfund and with some individual site cleanups. But let's be honest and acknowledge that those problems were in many respects due to some miscalculations on the part of Congress and past administrations. For instance, it's clear that in writing the original Superfund statute, Congress greatly underestimated the original size and complexity of the toxic waste problem in this country. It's also true that the program was grossly mismanaged during its crucial developmental phase by former EPA officials like Ann Gorsuch and Rita Lavelle.

The truth is that the Superfund program is a complicated answer to a complex problem. However, I've found that many of the complaints that are often repeated about Superfund stem more from a lack of understanding about the nature of environmental pollution and remediation and unrealistic expectations about Superfund. What many fail to recognize is the sheer volume and complexity of the National Priorities List, the contamination at any given site on the NPL, and the need to develop a whole new generation of technology to just to treat that contamination.

Maybe one way to look at Superfund is to use the analogy of a dinner table. I think that the general public expects a superfund cleanup to be a quick and easy venture, like sweeping crumbs off of the dinner table. But in reality, it's more like trying to get stains out of a white table cloth after someone spilled their 3 course dinner all over it. Like a superfund site, it only takes a minute to stain the tablecloth --but far, far longer to undo the damage. But even that's an incomplete analogy because the superfund program also had the added burden of having to invent the equivalent of the washing machine and soap!

I just raise these issues by way of context. What I'd actually like to do is talk about a couple of Superfund's success stories, because I'm personally familiar with many of them.

And maybe it's appropriate to begin with a successful cleanup that's near and dear to my heart: the Chemical Insecticide Corporation site in Edison, New Jersey in my district.

The Chemical Insecticide Corporation manufactured pesticides at the Edison site from 1958 through 1970. As a result of CIC's operations, the site became heavily contaminated with arsenic, organic pesticides, herbicides and other hazardous substances. Nearly 77,000 people live within a 3-mile radius of this site.

However, of real concern to residents and me was the contamination that migrated off-site to an unnamed stream and Mill Brook. Both of these are used for recreation by local residents, including children. Because we believed that the offsite pollution posed a real threat to the health of Edison, I wrote to EPA in December, 1994 urging the agency to ensure full and swift remediation of all offsite contamination. By March 1995 EPA had signed a Record of Decision on the offsite contamination and by July 1995 EPA had begun removing what was to amount to a total of 13,300 tons of contaminated soil. EPA completed that removal in December and the Agency has also backfilled the excavated areas, restructured and stabilized the stream beds and banks, and planted thousands of upland and wetland trees and shrubs.

I am happy to announce that today, EPA will declare the offsite cleanup complete. So, in two years, EPA has not only responded to our request but actually completed the offsite cleanup! What's interesting to note about this action, too, is that by going through a full public process and by being responsive to my affected constituents, EPA probably ended up slowing down the pace of the cleanup somewhat, but ultimately ended up doing a much better and less disruptive job.

Another success story in my district is the Kin-Buc landfill cleanup. This infamous former landfill was closed by our state DEP in 1976 because of repeated violations including seepage of toxic leachate into the Raritan River. I visited that site a few months ago, and I can tell you, it's come a long way from where it began. One operable unit is complete, and the other is almost there. EPA is working with other federal and state agencies to restore wetland vegetation at this site and monitor the site's overall progress to ensure that toxins no longer find their way into the crabs and fish that are often eaten by local residents.

I have been very active in trying to educate my colleagues on the dangers of mercury in our environment and I mentioned a mercury contaminated site in New Jersey earlier. But perhaps one of the best examples of EPA's work is addressing mercury contamination in Georgia at the LCP site in Brunswick.

This is an industrial site that had many environmental problems and did not come into compliance with the law when ordered to on various occasions by the State of Georgia. The State actually filed suit to close the facility.

This is a dangerous site by any standards. Between 1980 and 1994 380,000 pounds of mercury literally disappeared into thin air or rather the environment. Let me just repeat that figure: 380,000 pounds of mercury, a substance that poses a clear, significant danger to human health. The site is also contaminated with lead, PCBs and barium.

As I've noted before, states can't always get the job done on their own: they often lack the expertise or funds to cope with toxic threats. This was clearly the case with LCP: within a day of the facility's closure, the state of Georgia asked EPA to come in to deal with the threat. That was 3 years ago. Almost immediately EPA began a removal action to mitigate the threat to the surrounding people and environment. In addition to undertaking the removal action, within 1 1/2 years EPA proposed the site for NPL listing and listed the site less than a year later.

Let me quickly describe what they did because I think the shear volume of EPA's work is mind boggling. Since February, 1994 EPA has removed 450,000 lbs of mercury, 130,000 tons of contaminated waste, and 20 tons of asbestos. It has demolished the main process building and decontaminated 75,000 tons of steel and building debris. The agency has also treated over 30 million gallons of contaminated waste water and removed 120,000 gallons of contaminated oil from the site.

Perhaps the most impressive thing is EPA's work with a developer at the site to tailor the cleanup to the future use of the LCP site. Because of this work, a ship builder is already looking to purchase the site and begin construction of dry docks on an area that is already cleaned up. This holds the promise of bringing some 300 high skill jobs to a site that the State of Georgia once tried to shut down.

In closing, I hope my testimony provides some insight into the bright side of the Superfund program and into some of the complexities that necessarily arise from such a massive and intricate undertaking as toxic waste cleanup. If I haven't made it clear enough, my message to you and the American people is that Superfund, while not perfect, does work. In fact, it often works very well and there are people and communities that have had a very positive experience with the program and would continue to welcome EPA's efforts to help safeguard their well being and restore their lands to productive use.

All of us --residents, industry, local officials, EPA, and members of Congress--want to speed the pace of cleanups, and I look forward to working together to accomplish that goal in a manner that fully protects human health and the environment.

Mr. MCINTOSH. Thank you, Mr. Pallone. I appreciate you coming over, and we'll make your full remarks part of the record.

Let me now call forward the first panel of witnesses, Mr. Don Parris, Mr. Richard Castle, and Mr. John Lynch.

Mr. WAXMAN. Mr. Chairman, I seek recognition for a point of order. Committee rule 2: The minority must receive at least 3 days notice of the identity of witnesses unless prevented by unusual circumstances. This rule was not followed. If I might be heard further on it. We didn't learn the identity of the witnesses on panel one until yesterday afternoon. The late notice has not allowed us ample time to prepare questions or to investigate what the witnesses' testimony might be.

I don't object to hearing the testimony of these witnesses today, but I would request that they testify at the end of the hearing. This would allow us at least a minimal amount of time to prepare for the witnesses' testimony. Delaying the testimony of the panel would also allow us to extend the normal courtesies to other witnesses that have prepared to be with us; delaying the testimony would also allow us to extend the normal courtesy to Mr. Laws, a senior official of the EPA.

Our tradition has always been to allow senior administration officials to testify after Members of Congress and before the other witnesses. You indicated these witnesses are grassroots witnesses, you want to hear from them first. We have other grassroots witnesses who will come with testimony that disagrees with your position, they happen to be put at the bottom.

But my point of order is on a violation of committee rule 2, and I assert that point of order at this time.

Mr. MCINTOSH. OK. Let me just say the Chair is cognizant of Mr. Waxman's concerns here. Adequate notice did go out for the hearing that we're having today, and these witnesses, as I mentioned, do represent people from outside of Washington, who have had real experience in these areas, unlike the fourth panel, which are statisticians talking about the methods of analysis, and we will proceed to have the hearing as it was indicated, with this panel first.

Mr. WAXMAN. Mr. Chairman, you indicated that the notice of the hearing was given out in an appropriate time, but the rule says that the names, titles, background, and reasons for appearance of any witnesses. Information on these witnesses were not—their names were not submitted to us.

The only ones who are listed, and I have the notice before me and wish to put into the record—the notice that was sent out on February 6, 1997, indicating that the only witnesses would be the General Accounting Office auditors, Mr. Peter Guerrero, Mr. Stanley Czerwinski, Mr. John Donaghy on panel one and panel two, Environmental Protection Agency officials, the Honorable Carole Browner, Administrator, U.S. EPA (invited). So we did not receive the names of the witnesses who are about to appear right now. Again, I don't object to their testifying, even though the rules have not been followed, but it seems to me that they ought not to be ahead of everyone else. And so I assert that point of order.

[The information referred to follows:]

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

February 6, 1997

MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

FROM: David McIntosh

SUBJECT: Briefing Memorandum for February 11, 1997 Hearing "GAO Findings on Superfund Clean-Up"

On Tuesday, February 11, 1997, at 10:00 a.m. in Room 2154 Rayburn House Office Building, the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs will hold a hearing on "GAO Findings on Superfund Clean-Up." At the request of former Chairman William F. Clinger, Jr., GAO initiated a study on the time it has taken to assess and clean up hazardous waste sites in the Superfund program. The purpose of the hearing is to examine the trends that GAO has analyzed in the time taken (1) to evaluate hazardous waste sites for possible placement on the National Priorities List (NPL) and (2) to clean up the sites following their listing.

At the request of our Committee, the General Accounting Office has analyzed the pace of Superfund clean-ups since 1986, when Congress, in reauthorizing the program, set certain goals for the Environmental Protection Agency (EPA). On November 22, 1996, GAO completed a Draft Report entitled, "**It Now Takes More Time to Assess and Clean Up Hazardous Waste Sites.**" Despite the statutory goals and the Agency's internal program goals, GAO concludes in the draft report that EPA is not currently (1) placing sites on the NPL within 4 years of their discovery or (2) ensuring that they are cleaned up within 5 years of their listing. At the current pace, GAO estimates that EPA will take on average at least 21 years to complete cleanups at nonfederal sites whose discovery was reported in 1995--11 years for evaluating the sites before listing plus at least 10 years for clean-ups after listing. Furthermore, GAO found, based on EPA's data, that the agency's efforts to expedite cleanups by applying the Superfund Accelerated Cleanup Model, launched in 1992, are having no noticeable effect on reducing the total time required for Superfund cleanups.

The Draft Report indicates that, while EPA has acknowledged the upward trend in the time taken to list and clean-up sites, they did not anticipate any improvement in the near future. GAO notes that the Agency has indicated that the listing of new sites is likely to remain constrained due to budgetary limits and that EPA is emphasizing the use of alternative strategies to clean up sites more quickly or transferring the responsibility for cleanups to other parties.

WITNESSES:

Panel I: **General Accounting Office Auditors**

- Mr. Peter Guerrero, Director, Environmental Protection Issues
- Mr. Stanley Czerwinski, Associate Director, Resources, Community and Economic Development Division
- Mr. Jim Donaghy, Assistant Director, Resources, Community and Economic Development Division

Panel II: **Environmental Protection Agency Officials**

- The Honorable Carol Browner, Administrator, U.S. EPA (invited)

Mr. MCINTOSH. OK. And my understanding is the rules recognize that you can have witnesses with less than 3 days notice under special circumstances. Since the full committee only organized yesterday afternoon, the Chair finds those special circumstances to be present and overrules the point of order.

Mr. WAXMAN. Mr. Chairman, I would like to be heard on a last point. We organized yesterday, but we had agreed that the subcommittees could call hearings. This hearing was called way in advance of yesterday's official organization. We agreed that this hearing would go forward, as with other hearings of the subcommittees of the Government Reform Committee, and I can hardly believe that that could be an excuse for not following the rule for these witnesses, when it certainly didn't prevent you from following the rules for all the other witnesses that are testifying today.

Mr. MCINTOSH. And I will just state for the record that the minority has had as much notice about these witnesses as we have, including receiving copies of their testimony at the same time as the majority did, and so we will proceed with the panel as scheduled.

Mr. WAXMAN. Mr. Chairman, are you ruling my point of order out of order?

Mr. MCINTOSH. Yes, indeed, I did.

Mr. WAXMAN. Then, Mr. Chairman, I appeal the decision of the Chair. And I make a point of order noting the absence of a quorum.

Mr. MCINTOSH. That point of order is overruled. There is a quorum.

Mr. WAXMAN. Mr. Chairman, a quorum is not present under the rules to deal with the appeal of a decision of the Chair.

Mr. MCINTOSH. Then the committee will stand in recess until a quorum is present.

[Recess.]

Mr. MCINTOSH. The subcommittee will come back to order.

It is my understanding that the minority would like Mr. Sanders to substitute for Mr. Waxman on making that point of order.

Mr. SANDERS. No.

Mr. MCINTOSH. OK. Then there's no legitimate point of order raised. According to rule 9 in the Parliamentarian's office, that has to be made by a member of the subcommittee. I will recognize Mr. Sanders for the purpose of making that point of order if he wishes to.

[No response.]

Mr. MCINTOSH. OK. No point of order. We will proceed to the witnesses.

First, let me ask all of the witnesses to please rise and repeat after me.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show that each of the witnesses answered in the affirmative.

Before we begin taking your testimony, I understand that each of you has submitted to the subcommittee your résumé and a brief statement regarding the receipt of Federal funds, pursuant to House Rule XI. I want the record to reflect your compliance with that truth in testimony rule, which I appreciate your doing.

Mr. Parris, did you or any of the entities you are representing before the subcommittee receive any Federal grant, subgrant, contract, or subcontract?

Mr. PARRIS. We did not.

Mr. MCINTOSH. Mr. Castle, did you or any of the entities you are representing before the subcommittee receive any grant, subgrant, contract, or subcontract from the Federal Government during the fiscal years 1995, 1996, or 1997?

Mr. CASTLE. We have not.

Mr. MCINTOSH. Mr. Lynch, did you or any of the entities you are representing before the subcommittee receive any Federal grant, subgrant, contract, or subcontract during the fiscal years 1995, 1996, or 1997?

Mr. LYNCH. I have not, sir, and I'm not representing any entities.

Mr. MCINTOSH. Thank you. I ask unanimous consent to make the witnesses' written certifications part of the record.

Mr. WAXMAN. Mr. Chairman, since it's the first time we have come to this issue of the certification of the rule, I understand that witnesses, all witnesses, have been given a certification of nonreceipt of Federal funds by this subcommittee, and the witnesses have been asked to sign it. I find that at odds with the rule, and I certainly would urge witnesses to be very wary about signing something which might be inadvertently incorrect, because in signing such a statement they would subject themselves to criminal penalties.

The rule, as I see it, says, "Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and limit their initial oral presentation . . . In the case of witnesses appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source, by agency and program, of any Federal grant or subgrant thereof, or contract or subcontract thereof, received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness."

Our committee rules don't go so far. Our committee rules say that when they appear, they provide a listing of any Federal Government grants and contracts received in the previous fiscal year. But this loyalty oath, almost, asserting that you have never received anything, says, "I am representing I have not received any Federal grant or subgrant thereof, or contract or subcontract thereof, during the current fiscal year."

I don't think witnesses are required to sign this. You can give this to them if they want to sign it, but I think they might be misled into thinking they had to sign something like this. All they have to do is submit any grants or say that they know of no grants. I question the propriety of this kind of form, and I want that on the record.

I don't want to take up time from the witnesses, but I think it's an issue that I want to highlight for further discussion as we all try to deal with this new rule requiring witnesses to make this disclosure.

Mr. MCINTOSH. So noted. That's the current policy of the subcommittee, but we will look forward to working with the minority in developing procedures to implement that rule.

Mr. WAXMAN. Current policy is a very strange notion. This is the first time we have implemented the policy. This is an attempt to implement the policy, and we want to talk further about whether this is the appropriate way to do it.

[The information referred to follows:]

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2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

Chairman David M. McIntosh

CERTIFICATION OF NON-RECEIPT OF FEDERAL FUNDS

Pursuant to the requirements of House Rule XI, I certify that neither I nor the entity(ies) I am representing before the Subcommittee (_____) has received any federal grant (or subgrant thereof) or contract (or subcontract thereof) during the current fiscal year or either of the two previous fiscal years.

By: C. M. Parris II — 2/13/97
Name *Date*

PRESIDENT
Title

ENVIRONMENTAL REMEDIATION CONSULTANTS, INC.
Organization Represented

ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

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By: [signature] 2-12-97

Name *Date*

[signature]

Title

COSTA CONCEPTS CONCEPTS INC.

Organization Represented

ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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Chairman David M. McIntosh

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By: John F. Lynch Jr. 2/13/97
Name *Date*

Lawyer
Title

None
Organization Represented

Mr. MCINTOSH. Mr. Parris, if you would share with us your testimony, please.

STATEMENTS OF DON PARRIS, PRESIDENT, ENVIRONMENTAL REMEDIATION CONSULTANTS, INC.; RICHARD CASTLE, PRESIDENT, CASTLE CONCEPTS CONSULTANTS; AND JOHN F. LYNCH, JR., SENIOR PARTNER, CARPENTER, BENNETT, AND MORRISSEY

Mr. PARRIS. Mr. Chairman and members of the subcommittee, we appreciate the opportunity to appear before you today and to express our views on an EPA directive requiring extensive reform, the Superfund Act of 1980.

Our companies are part of a consortium of environmental professionals with over 70 years of combined remediation expertise, small businessmen, each with their own expertise, networking to scientifically assess and implement natural, commonsense solutions to contamination problems. We are able to tap into the academic and commercial advances throughout the country, combining these with current remediation practice to offer site-specific initiatives never before attempted.

Petroleum organics, solvents, chlorinated compounds, heavy metals, and even low-level radiation, all are being successfully remediated using innovative, cutting edge, biologically based protocols. We are indifferent to the band-aid approaches of dig-and-haul, managed abatement, or capping, procedural throwbacks to the 1970's and 1980's that are still being championed by many large firms with their "one size fits all" mentality.

The focal point of our innovative methodologies centers on in-situ bioremediation, the use of naturally occurring organisms to augment the metabolic removal of hydrocarbons from contaminated sites, and the only remediation technology recognized by EPA that does not create secondary liabilities.

Our network has been successful in bridging the gap between R&D and the actual field application, to offer a proactive approach that is fast, effective, economical, and complete. We have found the typical period for minimally impacted soils to be 3 to 12 weeks, at a 25 to 30 percent cost savings over traditional technologies.

Through the use of strain selection, population dominance, cotreatment amendments, and hydrological manipulation strategies, we are able to minimize and maintain increased cell viability, thus allowing for the simultaneous cleanup of both soils and ground waters, and eliminating the need for "operable units" at a site. The site itself, in fact, is the operable unit.

Despite these obvious advantages proffered by small innovative companies, we remain on the outside looking in. The large approved vendors, garnering close to 90 percent of the most lucrative Government contracts while accounting for only 10 percent of the total remediation firms, are inflexible and have only one or two so-called "technologies" that they make fit particular situations, disregarding any site specificity.

Since there are no time limits established for closure, the incentive to clean the impacted area is minimal. Administer and manage are the coveted cash cows of these vendors. Thirty- to fifty-year cleanups are common in the industry, but what is actually meant

by "clean"? Since the inception of the superfund, only 33 sites have actually been cleaned, and we are speaking of a technical closure now as opposed to a paper closure.

Dig-and-haul rids the impacted area of the contaminant only to spawn the next generation of Superfund listings; namely, the landfills. Pump-and-treat was recently approved by a regulatory agency because they knew of no other technology that fit a specific site. The estimated time for that closure was 900 years, and this was actually approved by that agency, with the caveat that, if something else came to light within that period of time, they might possibly use it.

Another case in point substantiating the need for Superfund reform is the Havertown PCP site near Philadelphia, PA. It was formerly a wood treater facility that had PCP, creosote, arsenic, copper chromate, dioxin, and various other contaminants. The EPA held various town meetings to update the community on its efforts and to ask for alternatives to the record of decision, which was capping, due to citizen opposition.

We visited the site and reviewed some of the available documentation. We found that there was no thorough site characterization; namely, no plume mapping, migration profiles, or hydrological studies. There was no current toxicological investigation.

There were very lax meeting protocols filled with a lot of misinformation to the community, and there was constant posturing at these meetings that the cap remedy was not predestined and was merely an interim measure until a better technology could be developed. The apathetic citizenry of that area compared the entire project to a dairy farm that was about to be milked for the next 30 years.

We felt we could help. We proposed to Havertown and the EPA the following: we were to hold meetings with the EPA and the community to explain our technology; we were to answer any questions or any challenges; and we were to do treatability studies, at our own expense, on soils and ground waters; we would undertake a full site characterization to define the sources, the zones of impact, and migration pathways; we would submit a revised corrective action plan to clean up the soils and the ground waters and all the adjacent properties; and we could reach closure, we felt, with the information that we had, within an 18- to 24-month period.

On top of all this, we were going to guarantee this closure through performance bonding. No cleanup; no pay. EPA's response to our efforts was less than desirable but not unexpected. It ranged from our proposals being totally ignored—after all, they had never put a guarantee and a cleanup in the same sentence—through competency and nontechnical rebuttals of proven facts.

Finally, the township was given the ultimatum to accept the cap or lose funding. Federal marshals enforced this order, and the site was topically sealed within 2 months. As a peace offering, nonpermanent buildings could be erected on the site or, in fact, it could even be turned into a playground.

In summary, it is obvious to us that the EPA fell far short in their duties and responsibilities at Havertown. No. 1, in light of technical advances and dynamic site conditions, reevaluation is definitely warranted. The use of 1970's and 1980's technology, the

evaluation of bioremediation by a generic, nonspecific report with no regard to provable merit, source elimination, and the lack of mandatory hydrological and geological studies all support this finding.

No. 2, EPA's remedial plan fails to consider permanent future use of the property and its concomitant tax base. They would have restrictive building codes and no underground utilities. Our methodologies actually clean the site up, to or below Federal and State standards, with no use limitations.

No. 3, EPA would not consider or evaluate the economic advantages of our technology. With it, there would be no need to buy additional land, no need to construct roads, no need to cap, no need to build a $10-million treatment facility, no need to demolish buildings, and no need for an operating and overhead expense for the next 30 years.

The total cost of the project would exceed, probably, $40 million, and nothing will be cleaned, only managed. The source will continue to pollute the ground water, and, as we all know, soil cleanup using pump-and-treat just doesn't work.

This is just one site among many and we are but one group among many. If the EPA is to live up to its mandate, as evidenced by the preceding scenario, clearly many changes are necessary. They must get in step with the new thinking and put the emphasis back on science. It is a sad note that cutting edge, innovative companies can totally remediate a site in one-tenth the time it now takes to simply administer that site, saving countless lives, years of nonuse, and billions of tax dollars.

We thank the committee for its efforts on behalf of the environment and for allowing us to participate.

[The prepared statement of Mr. Parris and Mr. Castle follows:]

TESTIMONY

Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Committee on Government Reform and Oversight

House of Representatives

GAO Findings on Superfund Clean-Up

By: C.M. Parris II
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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before you today and to express our views on an EPA directive requiring extensive reform - The Superfund Act of 1980. My name is Don Parris and I am President of Environmental Remediation Consultants, Inc., of Sarasota, Florida. Mr. Mike Castle, President of Castle Concepts Consultants, Inc., and Sustainable Technologies Corp., of Ohio is also in attendance. Our companies are part of a consortium of environmental professionals with over 70 years of combined remediation experience. Small businessmen, each with his own expertise, networking to scientifically assess and implement natural, common sense solutions to contamination problems. We are able to tap into academic and commercial advances throughout the country, combining these with current remediation practices, to offer site specific initiatives never before attempted. Petroleum organics, solvents, chlorinated compounds, heavy metals, low level radiation -- all are being successfully remediated using innovative, cutting-edge biologically based protocols. We are indifferent to the band-aid approaches of dig and haul, managed abatement, or capping -- procedural throw-backs to the 1970's and '80's that are still being championed by many large firms with their *"one size fits all"* mentality.

The focal point of our innovative methodologies centers on in-situ bioremediation -- the use of naturally occurring organisms to augment the metabolic removal of hydrocarbons from contaminated sites and the only remediation technology recognized by EPA that does not create secondary liabilities. Our network has been successful in bridging the ever burgeoning gap between R & D and actual field application to offer a proactive approach that is fast, effective, economical, and complete; typical period for minimally impacted soil closure is three (3) to twelve (12) weeks at a 25-30% cost savings. Through the use of strain selection, population dominance, co-treatment amendments, and hydrological manipulation strategies, we are able to maintain increased cell viability, thus allowing for the simultaneous clean-up of both soils and ground waters and eliminating the need for multiple *"operable units"* at a site -- the entire site is the operable unit.

Despite these obvious advantages proffered by the small, innovative company, we remain on the outside looking in. The large, approved vendors (garnering 90% of the most lucrative government contracts while accounting for only 10% of the total remediation firms) are inflexible and have only one or two so-called technologies that they *"make fit"* the particular situation, disregarding any site specificity. Since there are no time limits established for closure, the incentive to clean an impacted area is minimal -- administer and manage are the coveted cash cows of these vendors. The Army recently awarded a $200M/5 Year Contract to manage -- not clean -- one of their bases.

Thirty - fifty year clean-ups are common in the industry, but what is actually meant by clean? Since the inception of Superfund, only 33 sites have been *"cleaned"* -- technical as opposed to paper closure. Dig-and-haul rids the impacted site of the contaminant only to spawn the next generation of Superfund listings -- landfills. Pump-and-treat was recently approved by a Regulatory Agency because they know of no other applicable technology -- estimated time for closure in this instance was 900 years. Is there no sanity?

Another case in point substantiating the need for Superfund Reform is the Havertown PCP Site, near Philadelphia, PA. It was formerly a wood treater facility that had PCP, creosote, arsenic, copper-chromate, dioxin, and various other contaminants. The EPA held various town meetings to update the community on its efforts and to ask for alternatives to the ROD (capping), due to citizen opposition. We visited the site and reviewed some of the available documentation prior to one of these meetings. What we found: there was no thorough Site Characterization, plume mapping, migration profiles, or hydrological studies; no current toxicology investigation; lax meeting protocols filled with misinformation; constant posturing that the cap remedy was not pre-destined and was merely an interim measure until a better technology could be developed; and an apathetic citizenry that compared the project to a dairy farm that was going to be milked for the next 30 years.

We felt we could help. We proposed to Havertown and EPA the following: hold meetings with EPA and community to explain our technology, answer any challenges or concerns, and do treatability testing (all at our expense) on soils and ground waters; undertake a full Site Characterization to define sources, zones of impact, and migration pathways; submit revised CAP to clean up site soils and ground waters and adjacent properties (preliminary costing between $6 - $8 M); reach closure below inflated action levels in 18 - 24 months; and to guarantee this closure through a performance bond -- no clean up, no pay.

EPA's response to our offers was less than desirable, but not unexpected. It ranged from our proposals being totally ignored (after all, no one had ever mentioned guarantee and clean up in the same sentence), through competency, to non-technical rebuttals of proven facts. Finally, the Township was given the ultimatum accept the cap or lose funding; Federal Marshals enforced the order and the site was topically sealed within two (2) months. As a peace offering, non permanent buildings may be erected on the site or it could even be turned into a playground.

In summary, it is obvious to us that EPA fell far short of their duties and responsibilities at Havertown:

1. In light of technical advances and dynamic site conditions, re-evaluation is definitely warranted. The use of 1970's and '80's technology; the evaluation of bioremediation in a generic, non specific report with no regard to provable merit; source elimination; and the lack of mandatory hydrological/geological studies all support this finding.
2. EPA's Remedial Plan fails to consider permanent future re-use of the property with its concomitant tax base; would have restrictive building codes with no underground utilities. Our methodologies actually clean up to or below Federal/State standards, with no use limitation.
3. EPA would not consider or evaluate the economic advantages of our technology. With it, there would be no need to buy additional land; no need to reroute roads; no need to cap; no need to build a $10M treatment plant; no need to demolish existing structures; no need for O & M fees of $15M for 30 years.

The total cost of the project will probably exceed $40M and nothing will be cleaned -- only managed. The source will continue to pollute the ground water and, as we all know, there is no soil clean up of these contaminants using pump-and-treat.

This is just one site among many and we are but one group among many. If EPA is to live up to its mandate, as evidenced in the preceding scenario, clearly many changes are necessary. They must get in step with the new thinking and put the emphasis back on science. It is a sad note that cutting edge, innovative companies can totally remediate a site in 1/10 the time it now takes to simply administer that site, savings countless lives, years of non use, and billions of tax dollars. We thank the Committee for its efforts on behalf of the environment and for allowing us to participate. This concludes our oral testimony.

Mr. MCINTOSH. Mr. Parris, I appreciate that testimony. What we will do is, we will hear from each of the panelists and then have a period of questioning from the committee.

Our second witness on this panel is Mr. Lynch.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Gentlemen, may I have your attention. I would like to address particularly, Mr. Waxman, some of your concerns. I will state at the outset that this is a personal statement. I am not here in a representative capacity. Your staff invited a party who had complained about the intractable delays and costs of this program, and that party suggested me as an alternate because I had experience with many more cases.

Mr. SANDERS. Mr. Lynch, could I just encourage you to bring the mic a little bit closer to your mouth, please.

Mr. LYNCH. Sure.

Mr. SANDERS. Thank you very much.

Mr. LYNCH. I first spoke to someone on your staff about this thing yesterday morning at 10 o'clock. I pulled an all-nighter writing my testimony, but I do believe I'm coming in the idea that someone who has made a living at this for 12½ years may have something of value for the very important national debate that you folks are at the heart of.

Mr. WAXMAN. Mr. Chairman, I don't want to take up his time, so maybe we can start it over.

Mr. Lynch, let me make a couple of things clear. You never talked to anybody on my staff.

Mr. LYNCH. You or the committee, sir.

Mr. WAXMAN. No, you never talked to anybody on my staff. You might have talked to the majority staff, but not to our staff.

Mr. LYNCH. I agree.

Mr. WAXMAN. Second, the rules require that we have the testimony in advance so that we can review it and ask intelligent questions. I want people to see your testimony we received this morning; it's all handwritten.

Mr. LYNCH. I understand that, sir.

Mr. WAXMAN. Now, I have no objection to your testifying. I want everybody to testify who has something relevant to say. And my beef is not with you; my beef is that we should have had this in advance, and the chairman didn't protect the Members.

Mr. BARR. Mr. Chairman, I have a point of order, please. Could I inquire of the Chair if we can proceed under regular order and whether a point of order would lie to that effect now, so we can proceed.

Mr. MCINTOSH. Let us proceed.

Mr. WAXMAN. I would like to ask unanimous consent that the gentleman's time start now so he will get the full 5 minutes.

Mr. MCINTOSH. We will do that.

Mr. Lynch, go ahead. Proceed.

Mr. LYNCH. My apologies, sir, for the handwritten. It's the best I could do. I tried to get it typed, faxed to my office, typed back, and I did not know the handwritten was going to be handed to you. I would really request the honor to be able to put a proofread version in front of you sometime later.

Mr. MCINTOSH. We will gladly accept that testimony. Mr. Lynch, let me just say, the committee is extremely pleased that you are able to be with us today, and we understand that, unlike the Government, the private sector doesn't have huge staffs to help them prepare these things months in advance and that you are taking time away from things you could be doing in your business in the private sector. So thank you for coming, and I appreciate the testimony you are giving.

Mr. LYNCH. Well, that's OK.

My central idea is this, that you, a congressional committee, should be at the heart of this national debate, because you are involved with governmental operations affecting the national economy. I think what's wrong with this program is at that point. It's not in the details of administrative reform or the other things you are probably going to hear more about.

I speak primarily to address the problems at multiparty sites. I don't have any brief to file with regard to what the Government wants to do to tell some guy to clean up his factory. I'm talking about the multiparty sites, the kinds of sites that are taking the administrative and litigation delay that you are talking about.

The central point I want to make is that among all species of Government programs, Superfund—and I don't think this is widely recognized—is an entirely new animal. It looks like some others, and parts of it can be recognized by comparison to other species, so it's more like a mutation than an alien, but this is fundamentally a new animal, and I don't think people understand that.

What I'm saying is that the main problem with this program is not the way it's dealt with in the field, though certainly there are those kinds of problems. In the main, EPA employees are certainly not stupid, ignorant, or evil. The companies that respond to these cases are not rogues, insensitive to the national will. All these folks are simply reacting to try to deal rationally with something foreign to their experience and the national governmental traditions.

Let me illustrate how different this program is, showing how, in some ways, these factors of it can be recognized in other statutes but together they represent mutations of a governmental program which have produced a nonworking program.

First of all, most environmental statutes—RCRA, Clean Air, Clean Water, NEPA—tell this generation how to deal with its hazardous substances today. Those programs tell us how to allocate resources to produce products today and fulfill national environmental policies at the same time. In contrast, Superfund asks this generation to use its assets to pay for the sins of the past, and sometimes to pay for the good actions of the past.

Second, most significant allocations of resources in our society are done by market forces—Adam Smith's invisible hand—or by legislative decisions by Congressmen such as you, hammered out against the background of demands of competing programs and their fiscal constraints, while you guys try to reach, if not a balanced budget, at least a responsible one. In contrast, Superfund does not give bureaucrats money to spend; it gives them power to spend other people's money off budget.

Third, most governmental programs which operate by giving power, check that power by making it subject to judicial review be-

fore it matures into any order that must be obeyed. In contrast, Superfund falls within an exception to the general principle of prior judicial review carved out for health-related cases in the U.S. Supreme Court case of *ex parte Young*.

Fourth, most governmental programs that come within the *ex parte Young* exception are intrinsically limited in the amount of the generation's wealth they relate to. The quarantine of a ship in a harbor may be seriously bothersome to the cargo and shipping companies, but their capitalization and risk management decisions probably localize even that effect, and the national economy is not affected.

In contrast, there is nothing under Superfund—absolutely nothing—that prevents a single bureaucrat from ordering the entire gross domestic product to be devoted to cleaning up a single site. Now, that sounds silly. Perhaps it's really not going to ever happen—although, when I look out my window at a sediment case involving the Passaic River, I sometimes wonder—but the point I do want to make is that bureaucrats performing what they perceive to be their obligations under this statute can order just about any amount of this generation's fisc and can do it without a whole lot of cost considerations, cost benefit constraints of the consequences.

I will skip a point, just because of the time constraints, dealing with the fact that there is a delinkage between the traditional legal concepts in our society of cause—you have to cause a problem before you have to remedy it. Here, the dilution of the concepts of joint and several liability are so extreme that parties get dragged into cases with the smallest scintilla and are threatened with the ruinous consequences of the total dollar consequence of the entire site, and those consequences are not reasonably related to any kind of result.

The problems are compounded by efforts to do promptly that which ought not to be done in the first place, to do it by employing gross diseconomies of Government contracting processes, and to do it occasionally to serve the interests of the preservation of Government jobs. But as applied to multiparty sites, Superfund is a program made to make this generation pay for the cures of the ills of the past.

As such, in my opinion, it should be based on a congressional determination of how much we can afford, in this generation, to address those prior ills. How many bucks can we spend? We can't spend it all to clean dumps. Somebody has to grow the food to feed the people that clean them. Once that amount is determined, there ought to be a program implemented that holds people in Government responsible to get the most environmental bang for those bucks.

Instead, Congress has granted unprecedented power and tries to hold people responsible for how many cases they have closed and how fast they have closed them. This program has become yet another example, in our computer age, of the perversion of qualitative values into quantitative gymnastics. Protecting the health of ourselves, our children, and our planet has, under Superfund, become an exercise in counting beans.

Now, those are my conclusions, as I say, after 12½ years of dealing with this. If you want the details, anecdotal examples of any of these things, I will be glad to provide them.

[The prepared statement of Mr. Lynch follows:]

BIOGRAPHICAL INFORMATION OF JOHN F. LYNCH, JR.

You have asked me to outline any experience which might prove relevant in this matter. It is as follows:

I graduated from the U.S. Naval Academy (B.S. with Credit) in 1960. After 4 years in the fleet, I attended the University of Michigan Law School on a 2-year program and graduated (J.D. with Distinction) in August of 1966. I was a Law Clerk to the New Jersey Supreme Court in the 1966-67 term and followed that with a year and a half at a general practice firm doing medical malpractice and aviation defense case work-up.

I came to Carpenter, Bennett & Morrissey in February of 1969. Since that time, I have been involved in its litigation practice. By interest and inclination, I have gravitated toward complex matters. Most of my cases involve assembling and digesting significant amounts of factual material which often require some technical or scientific understanding. Early in my time at the firm that meant General Motors' product liability cases involving such matters as design of helicopter engines, the toxicology of carbon monoxide, and the dynamics of articulated vehicles. I also had significant experience in areas of antitrust and commercial fraud which brought me in contact with preparation and presentation of complicated accounting matters.

From the beginning of my practice, I have been interested in environmental law and, as one of the office's more technically-oriented people, I have had the opportunity to work on a variety of such matters. At first, in the late '60s, this meant motions to suppress surface and process water samples illegally seized by the Coast Guard acting under special New York harbor pollution statutes. Since then, I have been involved in stationary source air pollution work involving automotive assembly paint shops as well as surface water and process water discharge regulations. I have worked on toxic tort cases involving dyes and asbestos. I have represented individuals by successfully trying (and defending on appeal) a lengthy matter involving the improvident location of a poisonous gas factory in their residential neighborhood.

In the Superfund era, I have been involved in many more environmental cases; most are on the list attached. In some I have represented small companies, in some large companies, in some all sized companies, and in yet others I have represented no specific company. In those cases, I have been hired by lawyers representing individual companies to represent their collective interests in dealing with the outside world (EPA, NJDEP, other company groups, contractors, etc.) while they worked among themselves to resolve their relative share of the results of my efforts.

S[illegible]	REGION	LEADERSHIP ROLE	LEAD AGENCY	NPL?
Kin-Buc	II	Secretary, Treasurer, Allocation Committee	F	X
Duane Marine	II	Secretary, Treasurer, Allocation Committee	F	
SCP-Newark	II	Treasurer	F	
SCP-Carlstadt	II	Treasurer	F	X
Tonolli	III		F	X
Wide Beach	II		F	X
Tri-Cities Barrel	II		F	X
5-NYC Landfills	II	Shared Counsel for 6	P	
Quanta Syracuse	II		F	
Q[illegible]ta Edgewater	II	Treasurer	P	
4-Cannons Engineering Sites	I		F	X
Lone Pine	II		F	X
Bridgeport Rental	II		F	X
Renora	II		F	X
Review Avenue Long Island City	II		F	
Higgins Farm	II		F	X
Higgins Disposal	II		F	X
Jones Industrial Services	II	Chair, Executive Committee	F/S	X
Jonas Sewell Transfer Station	II	Common Counsel	S	

S	REGION	LEADERSHIP ROLE	LEAD AGENCY	NPL?
GEMS - Federal Court	II	Common Counsel, Liaison Counsel, Trustee in the Remediation	F/S	X
PJP	II	Shared Counsel for 12 Generators	F/S	X
Pedricktown	II		F	X
Helen Kramer	II		F	X
Sayreville III	II		F/S	X
Sharkey's	II	Allocation Number Cruncher	F	X
Transtech	II	Liaison Counsel	P [see Kin-Buc above]	X
Shore Realty	II		P	
Armonk Well Field	II		S	
Swope Oil	II		F	X
Butler Tunnel	III		F	X

ohn Lynch

This is a personal statement. I am <u>not</u> here in a representative capacity. ~~I am here as a result of a staff invitation~~ Your staff invited ~~another~~ a party who had complained about the ~~program~~ intractable delays and costs associated with multiparty litigation [illegible] is [illegible] program. That party ~~looked to others for~~ [illegible] suggested me as a substitute ~~who knows more about the program~~ and ~~the same invitation came to me. I accepted your staff's invitation to~~ ~~invitation~~ I accepted ~~[illegible] [illegible]~~ in the hope that the opinions of one who ~~p~~ has been making a living for 12½ years almost exclusively in this program and its States cognate would have some value ~~be valuable~~ in the national debate about ~~this program~~ it.

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parts of it can be recognized by comparison to other species ~~but this~~ so it's more like a mutation than an alien being, but fundamentally it is a new animal.

What I am saying is that the main problem with this program is not the way it is dealt with out in the field; although there are some problems for the most part the EPA employees are not stupid, ignorant or evil; the companies that respond to these cases are not rogues minutemen to the national will. All these folks are simply reacting

by trying to deal rationally with something ~~unlike they~~ foreign to their experience and our national governmental traditions.

Let me ~~explain~~ illustrate by pointing out aspects of Superfund's fundamental shape that while not individually in we are militating which in combination have produced a non-~~...~~ working program

FIRST ~~Unlike most~~ Most ~~env~~ environmental statutes RCRA, Clean Air Act, Clean Water Act, ~~...~~ tell this generation how to deal with its hazardous substances today. ~~It tells~~ ~~That~~ Those programs tell us ~~is~~ how to allocate ~~its~~ our resources to produce ~~its~~ products while fulfilling national environmental policies. In contrast Superfund asks this generation to ~~take some of its~~ use its ~~wealth~~ ~~wealth to~~ assets to pay for the sins of the

to bear costs not related to current ~~values~~ or dollar economics

~~past~~ ~~even the sins of~~

~~the past~~ — often the presumably

conduct of the past.

SECOND Most significant allocations

of resources in our society are

by market forces (Adam Smith's invisible

hand) or by legislative decisions

hammered out by Congressmen against the background

of the demands of competing ~~[illegible]~~

programs and fiscal constraints

trying to reach if not a balanced

budget, at least a responsible

one. ~~[illegible]~~ In contrast

Superfund ~~is a legislative~~ does not give bureaucrats

money to spend it gives them power

~~[illegible] of power to spend~~

power to ~~[illegible] bureaucrats~~ to spend

other people's money off-budget

THIRD Most governmental programs which operate by giving power check that power by making it subject to judicial review before it ~~falls upon~~ matures into ~~an~~ action that must be stopped. In contrast Superfund falls within that exception to the general principal of prior judicial review carved out ~~by~~ for health related cases by the US Supreme Court in *ex parte Young*.

FOURTH Most governmental programs that come within the ex parte Young exception are intrinsically limited in the amount of this generation's wealth they can consume.

A quarantine of a ship in harbor may be seriously bothersome to the cargo and shipping companies involved but their ~~financial~~ capitalization and ~~their business~~ risk management decision probably contain even the local effect and the national economy is not at issue. In contrast under Superfund there is absolutely nothing that prevents a bureaucrat from ordering the entire Gross Domestic Product, to be devoted to the clean up of a single site. That sounds silly perhaps but it's true and while I don't expect that to happen I do expect bureaucrats performing their ~~duties~~ what they perceive

or their function to order conduct, ~~for beyond~~ that is to say ~~that~~ to order ~~expenditure~~ of funds from this generation's fisc, for ~~out of~~ beyond what anyone dealing with usual cost/benefit constraints would think of.

FIFTH Most governmental ~~state~~ programs rooted in liability schemes - even those where judicial review is possible - are rooted in the notion that the burden ~~cost~~ of the remedy should bear some rational and ~~practical~~ proportional relationship to causation of the problem. In contrast Segerfeld through a massive mutation of the

concept of joint and several
liability (a mutation, incidentally,
directly opposite to other trends in
that body of law) has ~~removed~~
deleted any sense of ~~proximate cause~~ the
relationship of cure to cause
to the joint that in many cases it has ~~disappeared~~
or exists in reality only in theory.
Beyond that, while
the rhetoric of Superfund ~~does~~ sounds
consistent with the cause to cure
connection — you know the ~~two~~
program invokes a "polluter pays"
rubric the ~~reality~~ political
polemic ~~is~~ grossly overwhelms
that. Polluter pays - unless
~~it~~ the pollution is from household
chemicals unpremeditatedly dumped

"~~landfilling~~" ~~operator~~ is
~~by towns~~ in a sand pit or
a swamp — by a town in ~~the~~ its garbage collection effort — don't make the polluter
pay; find some solvent industry
that sent ever a single drum to the
site. The polluter pays — unless the
polluter is a small business
no matter how bad that business'
waste or practices were.

There ~~has~~ political rhetoric spread to "reform" ~~effort to make~~
superfund ~~tax~~ to become more of what
it is now, ~~a bill~~ a set of invoices being sent at
site after site to companies [illegible]
that dealt with responsible or all haulers,
the kind that kept records, That means [illegible] to pay
for the waste practices of those
whose records have disappeared
either under unusual circumstances
or into the inaccessible vault

[Left margin: ~~which still~~. in pre-1978, ~~[illegible]~~ pre waste manifest days and still exist]

of some organized crime task force.

All of these contrasts are to illustrate that ~~the combination of~~ by the grant of off budget power ~~[illegible]~~ by mutated ~~of~~ joint + several liability, current costs for ex parte zoning, ~~off budget power~~ and conflicting solicitation ~~this~~ Congress has created a program where tradition

These problems are compounded by efforts to do promptly that which ought not be done, to do it ~~with the~~ by employing the gross diseconomies of ~~gov~~ the government contracting process, to ~~redo work done~~ do it ~~often~~ occasionally to serve ~~more to keep gov~~ against ~~com~~ ~~gov mistrust~~ the interest to preserve government jobs

~~In application~~ As applied to multiparty sites Superfund is a program to make this generation pay to cure the ills of the past. ~~But~~ As such it should ~~determined~~ ~~how~~ be based on a Congressional determination of how much we can afford and how many burdens we can spread ~~applied~~ should be implemented in a program that holds people ~~in government~~ responsible to get the most bang for those bucks. ~~environmental~~ Instead Congress has granted unprecedented power and ~~duties~~ tier to hold people responsible for how many cases they have closed and how fast

they have closed them. As such the program is yet another example, in our computer age, of the perversion of our ~~sss~~ quantitative values into quantitative gymnastics. Protecting ~~sss~~ the health of our selves, our children and our planet has under Seyffard become an exercise in counting beans.

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Via FedEx

February 26, 1997

Congress of the United States
House of Representatives
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Attention: Larisa Dobrianski, Esq.

Re: Personal Statement of John F. Lynch, Jr.
Hearing Held on February 13, 1997

Dear Ms. Dobrianski:

Enclosed please find ten copies of the written version of my Statement for the Subcommittee, the abbreviated oral version of which was given on Thursday, February 13, 1997. The extra copies are in case you have use of them as, for example, distribution to the members.

Respectfully yours,

CARPENTER, BENNETT & MORRISSEY

BY: John F. Lynch
JOHN F. LYNCH, JR.

JFL/dms
Enc.

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
- SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS -

Hearing Date: Thursday, February 13, 1997

Personal Statement of John F. Lynch, Jr.,
as an Individual, not in a Representative Capacity

John F. Lynch, Jr., Esq.
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This is a personal statement. I am not here in a representative capacity.

The Subcommittee Majority Staff invited a party who apparently had complained about the intractable delays and costs associated with multi-party[1] sites in this program. That party suggested me as a substitute. I was contacted yesterday. I accepted in the hope that my opinions, based on 12 1/2 years of making a living almost exclusively in this program and its State cognate, would have some value in the national debate about it.

Central to those opinions is that it is profoundly appropriate that you, a Congressional Committee that can study this program as a problem of governmental operations affecting the National Economy, be at the heart of this national debate. That is because the problems of multi-party sites are fundamen-

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[1] One thing that you should realize is the distinction between single party and government response sites, on the one hand, and multi-party sites on the other. You may have noticed, as a Subcommittee of the House Public Works and Transportation Committee of the 102nd Congress did, that when supporters of the program brag about its successes, they point to cases where a plant or disposal site owner was forced to clean up its site, or the EPA acted itself. When critics of the program decry its excesses, they talk about those sites where several, or maybe even several hundred, parties were ordered to clean up a site to which, perhaps, several thousand parties contributed hazardous materials. It is in those cases that companies are faced with ruinous costs to cure a harm which they did not create. In those cases, they pay lawyers, engineers, and others to see that they only pay no more than they should. These are the landfill cases, the lead sites, the sediment sites, and the like.

I do not speak against the use of Superfund to order companies to protect their neighbors from the harm the companies caused at their own plant sites, even if the cost is ruinous. (I do, however, believe the available money is better spent on remedy rather than property value reduction (stigma) damage class actions.)

tally rooted in the governmental structure of this program. Among all the species of governmental programs, Superfund is an entirely new animal. Oh, it looks like some others - and parts of it can be recognized by comparison to others - so it's more like a mutation than an alien being. But, fundamentally, it is a new animal.

What I am saying is that the main problem with this program is not the way it is dealt with out in the field, although there are such problems. In the main, the EPA employees are not stupid, ignorant, or evil; the companies that respond to these cases are not rogues insensitive to the national will. Most frequently, I see EPA employees who are creative, intelligent, hard-working, public servants; and I have very often seen companies do far more than they ought to, and lead their colleagues to do likewise because it is their corporate policy to support the program. Yet, all those folks are reacting by trying to deal rationally with something foreign to their experience and our national governmental traditions.

Let me illustrate by pointing out aspects of Superfund's fundamental shape that, while not individually unique, result in a combined mutation of our nation's usual governmental response to problems. That collective mutation has produced this non-working program.

FIRST: Most environmental statutes - RCRA, Clean Air Act, Clean Water Act - tell this generation how to deal with its hazardous substances today. Those programs tell us how to

allocate our resources to produce products while fulfilling national environmental policies. In contrast, Superfund asks this generation to use its assets to pay for the sins of its past; to bear costs not related to current economics.

SECOND: Most significant allocations of resources in our society are by one of two mechanisms. One is by combined market forces (Adam Smith's invisible hand). The other is by legislative decisions hammered out by Congress against the demands of competing programs and fiscal constraints trying to reach, if not a balanced budget, at least a responsible one. In contrast, Superfund does not give bureaucrats money to spend; it gives them power to spend other people's money off-budget. And Superfund does not impose costs on contemporary operations so that market forces such as pricing and insurance risk assumptions can distribute the costs of responding to the government's power in proportion to current production.

THIRD: Most governmental programs which operate by giving power rather than money check that power by making it subject to judicial review before it matures into orders that must be obeyed. Such was the holding of Ex parte Young, 209 U.S. 123 (1908). There is a general exception to Ex parte Young often applied when the matter at issue involves health and safety. The Superfund law could fit within that exception. Actually, the exemption which Congress established to enable avoidance of pre-enforcement review is based on Congress' statutory control of federal court jurisdiction under Article III Section 1 of the

Constitution which was confirmed in the early case of Martin v. Hunter's Lessee, 14 U.S. 304 (1816). It is implemented by 42 U.S.C. §9613(h).

FOURTH: Most governmental programs that come within the exception to prior judicial review are intrinsically limited in the amount of this generation's wealth they can consume. A quarantine of a ship in harbor may be seriously bothersome to the cargo and shipping companies involved, but their capitalization and risk management decisions probably contain even the local effect; and the national economy is not at issue. In contrast, under Superfund, there is absolutely nothing that prevents a bureaucrat from ordering the entire Gross Domestic Product to be devoted to the clean-up of a single site. That sounds silly, perhaps, but it's true. While I don't expect that to happen, I do expect bureaucrats, performing what they perceive as their function, to order expenditure of funds from this generation's fisc far beyond what anyone dealing with usual cost/budget constraints would consider as appropriate for the risks presented.

FIFTH: Most governmental programs based on liability schemes - even those where judicial review is possible - are rooted in notions that the burden of the remedy should be borne by parties with some rational and at least vaguely proportional relationship to causation of the problem. In contrast, Superfund through a massive mutation of the concept of joint and several liability (a mutation, incidentally, directly opposite to other

trends in that body of law) has diluted any sense of the relationship of cure-to-cause to the point that in many cases it has no roots in reality, only in theory. Beyond that, while the rhetoric of Superfund sounds consistent with the cure-to-cause connection - you know, the program invokes a "polluter pays" rubric - the political polemic quickly overwhelms that. The polemic can really be heard to say the "polluter pays unless the pollution is from household chemicals improvidently dumped by a town in its garbage collection effort; forget that 50% of retail pesticides don't leave the container until the container is in a landfill - find some industry that sent a single drum to the site." Or the polemic like this: "The polluter pays - unless the polluter is a small business. Forget that this small business' waste or practices caused more harm than the Fortune 500 company with a merely arguable connection to the site."

SIXTH: The magnitude of judicial deference to the Agency's expertise is itself a major factor to be pondered by people practicing in this field. Nothing in law school taught judges toxicology or groundwater contaminant fate and transport. One joke told in this field has a judge who has decided to establish for himself "how clean is clean?" The young female lawyer tells him that, for $6 million, his client can reduce the contamination to 50 parts per million. He says, "Not good enough." Then, she says that, by adding $40 million in pumping and treating, her client can achieve 50 parts per billion. "Not good enough", he declares. She says that for $100 million more,

they can dig the waste up, rocket it to the sun, and only have a residual contamination of 50 parts per trillion. "Young lady, STOP! You don't get the point. It's the 50 that bothers me." Humor aside, practitioners who know that courts will not deal with whether a $400 million remedy is justified compared to a $4 million remedy also know that, on virtually all relevant scales, the Agency's orders are not subject to review.

Of course, one could point out that these problems are compounded by efforts to do promptly that which ought not to be done, sometimes to do it by employing the gross diseconomies of the government contracting process, occasionally to do it to serve the instinct to preserve government jobs. But that is not the point of this testimony.

Responding to the new and urgent national value of environmentalism, Congress has granted unprecedented power to the EPA. Congress then, in hearings like this, tries to hold the Agency responsible for how many cases it has closed and how fast it has closed them. This is the path that has led to the current GAO report in which the program is yet another example, in our computer age, of quantitative capabilities transcending qualitative values. Protecting the health of our selves, our children, and our planet has, under Superfund, become an exercise in "counting beans."

As an illustration of how different these "beans" are, one from the other, consider three sites in Hudson County, New

Jersey. That politically famous county is directly across from Manhattan.

- On the east, in Hoboken, there is a single loft building turned into a residential condominium for artists who then discovered it to be saturated with mercury. The EPA came to the rescue with a prompt clean up.
- In the middle of the county is the Hackensack River. On the Jersey City side of the river is a swamp where the smoke of an intractable dump fire was chronically engulfing a low income housing project across the street and an elevated highway directly above. In 1985-86, the State put out the fire by spending more than $22 million. It pursued Superfund in the hope of getting repaid. In 1996, the EPA issued a Record of Decision to compel construction of a cap on the rest of the property; the State's lawsuit against disposers of hazardous material, even non-flammable hazardous material, is ending its 5th year.
- Part of the western border of the county is the Passaic River. On the far side of the river, the City of Newark has been home to all manner of industry since 1666. On the near side, Harrison and Kearney house the same. Upstream, industry has lined the banks of the river in cities like Paterson and Passaic since waterfalls drove the early industrial revolution. Now, the

EPA has ordered one company (apparently unpopular, in part, because of its production of chemicals for the Vietnam War) to do a thorough study of the sediments at the bottom of the lowest 6 miles of the river. That study will cost in excess of $30 million and not be complete until the next millennium. I expect it will show that the sediments are polluted. Heck, officials knew that when, in the 40's or earlier, the fishery was closed. We don't know what remedy will be selected but we do know that it could be as much as dig up the bottom, say to a depth of 10 feet, for 6 miles, across a 100 foot width and dispose of the spoils at a hazardous waste landfill.

So, that singled-out company has, with EPA support, initiated the process of notifying hundreds of companies with facilities in the area asking them to help fund the study and prepare for the liabilities which will follow. For some of those, the nexus to river pollution will simply be their permitted use of the local sewer system, which overflows in heavy rain events. Even if "Brownfields" reforms permitted new industry to bring new jobs to Newark and Harrison without risk of future clean-up of the plant site, the new industry would become a joint and several Superfund target defendant after the first thunderstorm.

These three beans - a condominium, an 80-acre dump, and a 6-mile river bottom - are each a "site." If I understand the GAO's methodology, they are to be scored as comparable units in generating the kind of charts that have been put before you. This kind of management oversight may be all that the Superfund program allows but it doesn't make sense.

Conclusion

As applied to multi-party sites, Superfund is a program to make this generation pay to cure the ills of the past. As such, I believe it should be based on a Congressional determination of how many "bucks" we can spend and it should be implemented in a program that holds people in government responsible to get the most environmental "bang for those bucks" in terms of actually protecting human health and the environment. Instead, we have a program that grants too much power, that has no regard for efficient allocation of resources, and that is being monitored by quantitative studies of speed not qualitative studies of benefit.

Superfund (CERCLA and SARA) should be fundamentally changed.

APPENDIX I

One Person's Anecdotal Overview Of What Goes On In These Cases

In case you're wondering what people find so much to fight about in a statute which is pretty much absolute liability, let me give you some examples.

GEMS

At the GEMS Landfill, most industries were connected to the site because they used a company run by Marvin Jonas to haul their wastes. The theory of the governments was that Jonas would collect drums, dump them out into waste-hauling "luggers" at his facility and then haul the luggers to whatever landfill made sense at the time. One was too slippery in the rain. At another, if you timed it right, you could catch the gatekeeper on a coffee break. No records existed for which landfills were used. But one driver had testified that, during at least one year, 60% of the loads went to GEMS. (Others went to places such as the Helen Kramer Landfill.) So, the governments' theory was that anybody who showed up on Marvin Jonas' receivables ledger as having received a bill from him was presumed to have sent waste to him which went to GEMS. Small volume companies argued that a 60% chance didn't prove that their single load went to GEMS. Others argued that their appearance on the ledger sheet was as a result of drum purchases, not waste disposal purchases, but their records for 1970-74 were gone so they couldn't prove it. In this case, as in virtually every other multi-party site, just about

every party has a story to tell about how someone else's view of the company's allocation is too high because of some issue of QQ&N: the quality or quantity of the company's waste or its nexus to the site.

PJP

In the PJP case, the Hudson County dump fire case discussed in the main text of this testimony, all the defendants in the state court case are collectively arguing that the money spent to put out the fire doesn't have anything to do with hazardous waste particularly since the fire was burning before the waste got there. Also, one defendant group, the industrial generators, are arguing - as they do at most sites - against the haulers. The industrial defendants say that they were in the business of making products and are responsible for them. The haulers, most of which have been absorbed by Waste Management and its subsidiaries, were licensed to be in the business of providing waste collection and disposal services; they should bear the responsibilities of the proper performance of that business. The industries claim that those licensed haulers selected the sites, knew the conditions, and thus are the particularly appropriate parties to stand responsible for the disposal. They claim the industrial generators should only be responsible if the haulers' assets prove inadequate. Of course, they admit that, as between the manufacturers and the taxpayers, the liability scheme calls for the manufacturers to pay. The haulers counter by saying,

essentially, "What did we know from pollution? It was your stuff."

BROS

At the Bridgeport Rental and Oil Services (BROS) Site - a site whose 13-acre lagoon of oil was featured in the March 1985 National Geographic and on the ABC T.V. show "The Killing Ground" - the industrial defendants found other ways to busy themselves. Typically, those singled out for liability by the EPA were parties which had been attempting to be environmentally responsible by sending their solvents for incineration to a company licensed for such services, Rollins. When the material was off-loaded at Rollins, it was stored with other material with which it was chemically compatible until its time for the incinerator arrived. The complexities of compatibility caused Rollins to rent a few of the 93 above-ground tanks at BROS. The tanks were next to the lagoon and separated from it by an earthen dike. The EPA contended that one specific tank leaked on a specific date and that one other unidentified tank may have leaked on another, unidentified, date. Since the EPA had no idea who put the oil in the lagoon, it pursued the industries that sent their solvents to Rollins where the record showed that the solvents were transferred to the BROS tanks. The EPA made this claim for all Rollins waste that reached BROS notwithstanding the fact that the shipment may have been after the date of the known spill and into a different tank where as much material was removed as was sent in over the course of the lease. The Agency felt no need to

explain how the hypothetically spilled molecules hopped over the dike; it suggested there was a cross-connecting pipe system but that had been dismantled by the Corps of Engineers.

On these facts, the industrial generators argued lack of proof to support their liability for the remedy cost of over $100 million. They were offended by the incredibly large expenditures and overruns in the performance of a remedy that arguably did more harm than good. So, they set about to find out whose oil it was. They found out the vast bulk of it came from the Department of Defense from such facilities as the Philadelphia Naval Yard and the like.

LEAD SITES

At the lead smelting sites around the country, as at the BROS site, the problems appear to arise from industries that are cooperating with the national interest of the environment and their own economic interest. They did so by recycling lead scraps. Typically, a manufacturing company that uses lead in its products will collect the scraps and send them to the smelter where they are taken into the smelter building and melted down and reformed into useable ingots.

Often, these same smelters recycled used automobile batteries collected from hundreds of gas stations by putting them out in the parking lot, running over them with a bulldozer, sending scavengers in to pick the lead out, then pushing the balance off to the side into a landfill. The problems arose as lead "fines" washed off the parking lot or, as lead dissolved by

acid rain, leached out of the bottom of the landfill. The hundreds of gas stations claim innocence and entitlement to privileged treatment as a result of their small business status. The smelter may or may not have gone bankrupt. As a result, the industrial companies whose materials never were in the parking lot, or in the landfill, are pursued on the theory that some molecules of their material may have gone up the smelter flue or been spilled during delivery off-loading and ultimately found their way into the groundwater.

It matters little to the government that there may be more lead content in the surface soils as a result of discharges of the exhaust of passing cars during the nation's 50-year use of leaded gasoline. To the government, the industries that thought they were recyclers are THE POLLUTERS and, with joint and several liability, they can be made to pay for the public purpose of protecting the groundwater from the lead deposits of others.

In such cases, lawyers need only be willing to withstand the scorn of politicians castigating big business for beating up on little business in order to serve their clients by bringing the suits against the hundreds of gas stations. They can, however, do virtually nothing to defeat liability because the molecule-up-the-flue theory appears to be sufficient under this law. Meanwhile the gas stations seek coverage from their insurers and a new wave of litigation begins.

In short then, the amounts in controversy at these sites are sufficient to inspire companies to hire good lawyers to

minimize the companies' exposure. The lawyers, in turn, can find enough legitimate issues that advance their clients' interests to justify their hire.

APPENDIX II

One ~~of the~~ question ~~which came up during my discussions with the Majority Subcommittee Staff was~~ that I would like to address is whether ~~I thought~~ Superfund should be amended so that remedies that fall short of federal standards but which are acceptable to the states involved should be permitted.

My answer is no for the reasons that follow.[2]

I know that in addressing these remarks to members of Congress, I am addressing an audience far more sophisticated in American political processes than I. So, I would simply remind the members that, generally, a "let the states do it" is the approach of those who are politically opposed to achieving the goals of the program at issue. As a person of Democratic leanings, I may poke fun at the Republicans that share my lunch table about the efforts to localize welfare reform. But as an amateur historian, I know the Dixiecrats used the same arguments to oppose Civil Rights and the Democratic President Woodrow Wilson used it to oppose the vote for women.

There are, of course, some areas where the states are perfectly competent to and interested in effectuating a national

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[2] That is not to say that I believe that experience will never show that a federal standard is too strict. Nor do I think the one-way -- ratchet-the-standards-up -- bias of anti-back sliding rules is supportable. The stringency of federal standards can definitely be a problem if they are only expressed in terms of quantitative criteria, such as part per million, as distinguished from criteria that considers actual local effect.

will so that federal intervention is neither necessary nor appropriate. There is no state that wants to see hand-guns in public schools. So, as the United States Supreme Court held in United States v. Lopez, 514 U.S. ___, 131 L.E. 2d 626 (1995), such a matter is better left to the states.

But states do compete with one another for industry and, in the years before Superfund, that often meant disregarding the interests which the statute is designed to protect.

Perhaps nowhere was this more clear than in the 1979 ABC News television show which provided much of the political impetus upon which Superfund is based. That show was called "The Killing Ground." In it, the then and subsequent Democratic governor of Louisiana, Edwin Edwards, was being interviewed about the law of Louisiana which permitted the pollution of the bijou and left farmers with only the remedy of a few dollars to go buy another piece of land. He said,

> None of us, as far as I know, who are in a position of authority in the State apologize for that.
>
> We did what we thought was best for the people and the economy of Louisiana. We accommodated to industry where we thought we could in order to get the jobs and the development.
>
> And, in some instances, we knowingly and advisedly accepted environmental trade-offs.

In my state of New Jersey, under administrations of both parties (Governors Kean (R), Florio (D), and Whitman (R)), we have gone in an opposite direction partly because Superfund came along at precisely the time the State was realizing it had a

problem because it had regulated landfills as public utilities and had not permitted the rate formulas to include or require sinking funds for proper closure costs.

GEMS, Helen Kramer, Lone Pine, Global, Combe Fill, Sayreville III, and Sharkey's were all landfills for municipal trash in the pre-manifest era (pre-1978). At Sharkey's, Sayreville, and Lone Pine, waste was dumped in what we then called swamps and now called wetlands. At other sites, the waste was dumped in sand pits (GEMS) or on farmland (Helen Kramer). The hazards to groundwater under most of them was common to hazards common to similar sites all around the country regardless of whether there was "co-disposal" of industrial waste. At least one (Sharkey's) was benign, probably because it was partially located in a river and otherwise on a oft-flooded plain. All of these wound up as Superfund sites. Wags ask, "Why did New Jersey get all the Superfund sites and New York get all the rich lawyers?" Then, they respond, "New Jersey won the toss." The reality is that the New Jersey State government saw in this program a source of funds for proper closure of these sites. New Jersey also knew that Superfund site stigma would not lower its undeserved, Turnpike-based, reputation as an ugly place. So, it set about to tweak the numbers and put more sites on the list than any other state. Then, too, it was a way for New Jersey, chronically at the bottom of states in getting a percentage of its tax money back from Washington to get federal money.

If local, not national, standards are to prevail, New Jersey will gain more Superfund dollars. The states whose governors hereafter think as Louisiana's governor did in 1979 will gain more jobs. In the long run, a greater percentage of the national economy will be conducted where the environmental standards are lower.

It seems appropriate that I make another comment about this problem at this point. The fact is that environmental balkanization under Superfund is already in place. One current EPA policy is that sites will not be added to the National Priority List unless the application is supported by a letter from the governor.

Mr. MCINTOSH. Thank you, Mr. Lynch.

Mr. Castle, the staff informs me that Mr. Parris had presented testimony for both of you, but do you want to add any additional comments at this stage of the hearing?

Mr. CASTLE. Actually, my mission is just to answer questions, if there are questions. Being part of the consortium that Don was speaking of, we're sort of on a joint venture here into answering any questions as witnesses to the subcommittee. I don't have a prepared speech.

Mr. MCINTOSH. Thank you for coming today.

Let's turn now to questions from the committee. Let me direct the attention of all of the witnesses to the charts there on the left. These are from the draft study that GAO will be talking to us about in the next panel. What they indicate are how long it takes to place a site on a Superfund National Priority List and how long it takes to complete the cleanup after they have been placed on that list.

As you can see, the slope of those lines indicates that there's a steadily increasing amount of time since 1986, for both of those decisions and actions to be taken. Back in 1986, when Congress reauthorized the program, it took about 4 years to place a site on the Superfund list and then about 2½, maybe 3 years in order to clean it up. Today, in 1996, it takes a little less than 10 years to place it on the list and perhaps over 10 years to actually clean it up, making the total time over 20 years.

In your experience, what would you recommend that we make for changes that would try to, perhaps in an ideal world, return the timeframe back to where it was in 1986, but at least make some dramatic changes. I think we can recognize that, in the last year or so, the time it takes to place a Superfund site on the National Priority List has started to come down, but, unfortunately, the cleanup time has continued to increase.

Any recommended changes that you would have us recommend to EPA in this, or pass as a statutory change, in order to dramatically decrease the time for both of those decisions?

Mr. PARRIS. On the average time it takes to clean up the Superfund sites, I think the initiative that the EPA is starting to undertake, the assessment based on presumptive remedies, I think this is a good initiative to undertake if, in fact, it is done correctly and the correct presumptive remedies are, in turn, looked at.

And I think, as I stated, we've got to get more science-based initiatives, as opposed to engineering or physical removals of materials on sites. There's a lot of cutting edge science out there, not just what we talked about today. There are a lot of people looking at this problem, and a large quantity of them are small businessmen such as ourselves. These fellows need to be heard, and they need to have access to EPA as do the large vendors. They need to cut through the red tape, and they need to get to the people that they have to get to.

Mr. MCINTOSH. Let me pursue that, in particular, in the example you cited where you wanted to use bioremediation to actually clean up a site. Did EPA give any reasons for not even considering your proposal? I mean, was it just kind of a black hole, or did they give you some response?

Mr. PARRIS. Basically, none. We bantered back and forth a little bit, and talked about the reasons we could not or could, in fact, apply that remediation to this site. By the way, bioremediation is a presumptive remedy for wood treater sites; not the only remedy, but it is one of the ones that is considered foremost.

Mr. MCINTOSH. So, under EPA's own standard, what you were proposing fit into their presumptive remedies under their reforms?

Mr. PARRIS. That is correct.

Mr. MCINTOSH. But they wouldn't even consider that proposal for that site?

Mr. PARRIS. No, sir.

Mr. MCINTOSH. To the best of your knowledge, they didn't provide any rationale for making that decision.

Mr. PARRIS. They provided none.

Mr. MCINTOSH. I must say that bioremediation, as you described it, does seem to have a great deal of promise, particularly because we would actually remove the toxic substances from the site and not have to create another wastesite somewhere else. I applaud you for promoting that as an effort, because I think ideas like that will let us actually do a lot better job of cleaning up the environment.

Mr. PARRIS. Yes. And I might add, too, since it is done in place, we're not talking about two different cleanup entities here. When ground water is, in fact, involved, it is cleaned up simultaneously with the soil. It's a total package-type concept, and we don't segregate it into, again, operable units or anything. We go in, we assess the site, and we treat what we see on a site-specific basis.

Mr. MCINTOSH. You were willing to test this at your own expense at that site?

Mr. PARRIS. That is correct.

Mr. MCINTOSH. So they wouldn't even allow you on the site to do that, at really no expense to the Government or any of the parties?

Mr. PARRIS. No, sir.

Mr. MCINTOSH. A real quick question, Mr. Lynch, and maybe we will give you time and some of my colleagues to answer this in more detail, but if you could be thinking of some particular examples in making your points, which I found very telling in terms of the problems with litigation and the power of the bureaucratic imperative.

You have worked a lot in New Jersey, in that State?

Mr. LYNCH. Yes, sir.

Mr. MCINTOSH. Are there some particular sites there that have been delayed as a result of those problems you raised?

Mr. LYNCH. There have been lots of delays in the cases that we deal with involving people fighting over issues that, unfortunately, they have to fight over under the structure of the statute; yes. In landfill cases where we are trying to remediate—the State threw a lot of landfills on the list at the outset—basically underlying decisions to throw municipal garbage into the ground water of what previously was a swamp or a sand pit.

People realized that they are being asked, if they have one drum of dimethyl nasty, as an industry, to clean up what is essentially a public health problem resulting from an improvident siting of a

dump, and they fight it. They try to bring as many other parties in as they can.

In the lead sites, where a responsible manufacturer may have been recycling its scrap lead to be cast back in ingots and brought back on the site, they are getting sued for joint and several liability because thousands of gas stations sent their used auto batteries to this place where they run over them with bulldozers, pick out the parts, and sweep everything off to the side.

You wind up with lead in the ground, but the joint and several liability means the guy that just had sent product to get smelted and come back had a molecule go out of the stack, undoubtedly, somewhere along the way, and he's jointly and severally liable for the whole bunch. And the gas stations are saying, "You can't mean me," and the operator is out of business. That's the kind of site we have there.

There's currently ongoing a site for the 6 miles of the Passaic River. You know, Newark was founded in 1666. This is a 330-year-old industrial sewer, basically, and somebody is after one company to do a study that's costing over $30 million, to find out what's going on in the sediment, in the hope of possibly picking them up, putting them in drums at $500 a drum, to the depth of 10 feet, 100 feet wide and 6 miles long, and shipping it off to Emile, AL.

That company is running around trying to beat up on every other company that had anything within 100 miles—well, 10 miles anyhow—to say, "You might have had one scintilla of stuff; therefore, you are joint and severally liable. Join me as we face this hundreds of millions of dollars of liability." And people are saying, "Not me," fighting it back and forth. You know, it's providing a living for me—thank you very much—my kids are already through college. But as a matter of public policy, it's crazy.

Mr. MCINTOSH. You're not able to get any actual cleanup done during all of that time.

Mr. LYNCH. We're getting some sites done. We just finished a deal on the second phase of the Gems landfill where I'm common counsel. The first phase was $32.5 million. We brought it in on time and under budget. We're now addressing the ground water. We got the $30 million raised, and the trust is formed to go deal with it, and the consent decree is out for public comment.

We've got a lot of companies that are putting their shoulders to the wheel and willing to do it. A lot of them are saying, "I'm being dragooned. I'm facing Federal court for years and years and years, and they won't let me out, and I really am a little part of it." And frankly, they get their arms twisted, and they throw in $100,000 and, you know, you start building a $30-million pot of such inconveniences. That's part of the reality.

But there is progress being made. I'm not saying that. I think your question about how do we speed this thing up, respectfully, if you were the board of directors of an aircraft company that made planes that were unsafe, that were delivered late, that cost too much, and you aggravated the customers all along, you wouldn't be sitting here saying, "How can I deliver them faster?"

You know, you're focusing on the wrong thing. The problem is structurally with the program. The agency, I believe—I've met an awful lot of very fine, intelligent people in that agency, and they

are trying to do what they are told. To judge them by how fast they are counting beans instead of how many lives and how much of the environment they are protecting for the dollars available is really the wrong way to go.

Mr. MCINTOSH. So you are urging fundamental changes in the program.

Mr. LYNCH. Yes, sir. This generation ought to decide how much of its gross domestic product it can devote to what was disposed of before manifests were available in 1978 and go spend it and get bang for the buck. Right now we're creating something, designating it a site, pushing it through the system, and wondering how long we can do it. We're grading these people on sites, not lives. That's stupid.

Mr. MCINTOSH. Thank you.

Mr. Sanders, do you have questions for this panel?

Mr. SANDERS. I do, just a few. Thank you very much, Mr. Chairman.

First of all, I want to thank all of you for coming. As you know, the concern that we had is not hearing from experts, but from people who are in the trenches. We appreciate it. The only concern that we had is, we received your testimony very, very late, and really didn't have a chance to—and that's not your fault at all. We understand that.

The other point that I would simply make—and perhaps you would agree with me—there are some charts over there. Some of us have a problem with the methodology regarding that report. I don't think any of you are experts in GAO methodology or in tracing how fast or not fast the Superfund has been cleaned up in the last 15 or 20 years. You don't have any expertise in that, do you? You are businessmen who are involved in cleaning up Superfund, so you really don't have much expertise in what you have been asked.

Mr. Parris, I very much appreciate the thoughts that you shared with us and can appreciate your frustrations. I was a mayor of a city for 8 years. Dennis Kucinich is not here. He was mayor of Cleveland for a while. I think you would also agree that, on a particular case, you went in with a proposal; you feel you were not treated appropriately by the EPA. You would undoubtedly agree, would you not, that there may be another side to the story? Maybe you're right; maybe you're not. But there are two sides to every story; is that correct?

Mr. PARRIS. That's correct.

Mr. SANDERS. And the problem that we all have, none of us really have detailed information. I was a mayor. My God, how long it took; right? We have to read the reports, and we hear both sides, and we have to make difficult decisions. So you have come to us with a concern; maybe you're right. I'm not here to say that you're not. Maybe you're not right. I don't know.

Mr. Lynch, I appreciate your thoughts. I think you made some very good points, but I did not hear you say that in recent years the situation has deteriorated, that it was really good during the 1980's, but in the last 3 or 4 years, since President Clinton has come in, there has been a rapid deterioration in progress. All of

these concerns are new, never been seen before. You didn't say that, did you?

Mr. LYNCH. First of all, sir, I haven't voted for a Republican since Goldwater. OK? So my inclinations are to your side of the fence. Frankly, the people I deal with at the EPA are the same. The fellow that just recently was promoted to regional counsel, I've been dealing with him since 1984. The Government doesn't have a finer lawyer. I have not seen policy changes really affect things in the trenches, for good or ill. People are just trying to get their job done. They have some pretty intelligent, creative people.

Mr. SANDERS. I would just say that I think—not for me to apologize—I think you haven't been treated quite the way you should have been. We need your expertise, because you're out there doing the work, and we often don't hear that. So I appreciate your being here, and thank you very much.

That would be my remarks, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Sanders.

Let me turn now to the vice chairman of the subcommittee, Mr. Sununu.

Mr. SUNUNU. Thank you very much, Mr. Chairman, and thank you gentlemen very much for your patience today and your very substantive testimony.

I believe you were here this morning to hear Congressman Pallone speak, and certainly I have a great deal of shared sense of concern. As he stated, nine Superfund sites in his district. Coming from the First District of New Hampshire, I'm sorry to say I have 14 Superfund sites in my district. I will also agree with him that we have had some degree of success. The State agencies in our State have worked extremely hard, hand in hand, in some cases, with the EPA to make as much progress as is possible.

But I think the underlying point that we need to stress in these hearings today isn't a discussion about whether or not some success has been achieved, or a congratulation that technology may be improving and may hold some promise, the fact is, it takes a tremendous amount of time to clean up these sites. It has since the inception of the Superfund program. It takes far more time to clean up these sites, I think, than most people in the public realize.

Equally important, there is great concern and a good deal of evidence that the amount of time to clean up a given site, many would agree, is increasing. I think most would agree it certainly isn't decreasing. And that's what we ought to concern ourselves with is what's happened to the process here and, more importantly, are there ways to improve the process. I think we've heard discussion today of improvements that might be made on the technological side, improvements that might be made on the legal side, and certainly I hope that, as a committee, we can pursue these.

I would like to address a few questions to Mr. Parris. First, give us a feel for your organization. How many companies are we talking about in your consortium that are dealing with these more forward-thinking technologies? How many professionals are we talking about? Give us a sense of where they are located and to what extent they have been able to get themselves involved in some, if any, of the existing NPL-listed sites.

Mr. PARRIS. Basically, we have approximately 20 people in the consortium at this time, and they range from New York State down through Georgia, the Carolinas, Florida, and as far west as Ohio, Indiana—pretty much on the East Coast. Basically, we are brought together via the computer, Interneting, working with new ideas, putting things on the Internet, buzzwords that would attract people and different types of technologies to respond.

We've gotten people that have gotten into the phytoremediation, the use of plants to sequester heavy metals and this sort of thing. Biomats; we have some gentlemen that are very into that. But, again, our main focus—we can do the pump-and-treat systems, we can do the dig-and-haul, if that's required—but I think, right now and with the expertise that we have with these people, it's just outdated, old technology that we just don't want to deal with, and we have a much better way to do it.

We don't, again, look at operable units. We can clean a site of all the contaminants as a single unit, and we can do it very proficiently. We look at co-treatments, for example. Mr. Castle is an expert in polymer chemistry. And we've developed a lot of co-treatments that were not available several years ago.

Everything that we do, co-treatments, different types of hydrological manipulation, anything that we can do to increase the viability of the cells to cause this type of remediation to go on—after all, we've got to give an environment for the organisms to work, and this is something that was overlooked in the past.

In this consortium, these people that are involved, the polymer chemists, the chemists, the biochemists, the microbiologists, we're all looking at ways to improve the plight of the organism in the ground. We're looking to increase viability. We're looking to increase cell counts, and ultimately to reduce the time that it takes to clean up these sites.

Mr. SUNUNU. What percentage of the NPL sites that are out there do you think would be suitable candidates for the bioremediation techniques?

Mr. PARRIS. I would estimate in excess of 90 percent.

Mr. SUNUNU. Primarily those that are petroleum-related?

Mr. PARRIS. Right. Now we're starting to get into chlorinated solvents. We're doing very extensive work on chlorinated solvents, which a few years ago were not even considered to be bioremediable.

Mr. SUNUNU. Are there any other sites out there or how many sites out there that you are aware of that are at least experimenting or allowing some sort of limited usage of bioremediation to take place?

Mr. PARRIS. That would be hard to say. There are sites. As I indicated, the presumptive remedy for wood treater sites is, in fact, bioremediation, and there have been quite a few sites that have been cleaned up partially using that technology.

Here again, bioremediation comes in a lot of different flavors, and it's dependent on the type of technology that you have, the people that are administering it, and the professionals that know how to increase the productivity of the cells. It's not just a simple augmentation with carbohydrates, and this sort of thing, in the soils. It's actually increasing the population of specific strains of orga-

nisms in the ground that can metabolize the various organics, get those high enough so that they outcompete the other organisms and focus directly on the contaminant.

Mr. SUNUNU. Thank you very much.

Mr. MCINTOSH. Thank you, Mr. Sununu.

Let me check to see if there are any other questions for this panel.

Mr. WAXMAN. Mr. Chairman, I don't want to ask any questions of this panel, but I want to thank them for their presentations. If they wouldn't mind, when I get a chance to review their testimony, I might ask them to submit some responses in writing so we can have it for the record.

Mr. MCINTOSH. And we will keep the record open in order to do that.

Let me just say, I do appreciate your coming and your testimony, and I think a couple key points have come out of it. One is that some of the reforms that were, in fact, put into place need to be more fully utilized out in the field.

And, Mr. Parris, you've got bioremediation as one example of that.

I think your point, Mr. Lynch, that when you've got a bad system, good people can't do a good job, and that they are not personally responsible for that; they are trying to do their best, but the system itself leads to results that none of us want.

So I do appreciate all of you coming and testifying today and helping us build this record. It is my fondest hope that we can see some reform in this area in this Congress, in a bipartisan fashion. We got close last time, and I think we've got a chance this time.

Mr. LYNCH. May I respectfully sensitize you to one thing raised in the comments about Mr. Pallone's testimony. And I ask you, in testing these data, to keep this point in mind, because I think you will find it helpful. Three of the sites that Mr. Pallone cited were EPA emergency response or quick remedial action. I'm not talking about what—that's probably a pretty good program.

The Kenbuck site was essentially a single party, the owner, SCP, now Waste Management—they claim they are only an operator or only a transporter—it was a single-party cleanup site, and that's not a part of the program that's having the problem.

When you see data like this and you have those kinds of things mixed in, you ought to be sensitive to the fact that most of the grievances come from what are called multiparty sites. Somebody sent a little bit of waste somewhere with a bunch of other people. That's a discrete universe that is mixed in there. Unless you are sensitive to that, you're going to miss a lot of what really you're going to have to deal with.

Mr. MCINTOSH. Let me make sure I'm following you. The problems are much greater in the multiparty sites than in the single party?

Mr. LYNCH. By orders of magnitude. The potential for governmental abuses, in terms of overbearing on the poor guy that gets caught, are much greater.

Mr. MCINTOSH. That's very helpful.

Thank you all. We appreciate your coming.

Let us move now to our second panel: Mr. Peter Guerrero, who is the Director of Environmental Protection Issues; Mr. Stanley Czerwinski, Associate Director; Mr. Jim Donaghy, who is Assistant Director; and Mr. Mitchell Karpman, who is a statistician, all from GAO; and then Mr. Elliot Laws, who is the Assistant Administrator for Solid Waste and Emergency Response.

Mr. Laws, thank you for coming today. I understand it's your last day of service in that position. I congratulate you on serving the public and appreciate your coming before us.

It is my understanding that Mr. Waxman and Mr. Sanders would like us to implement the new rule that we have of allowing each side to have 30 minutes uninterrupted to question the panel as a whole.

Mr. WAXMAN. Mr. Chairman, I know that we're going to have some more extensive questions. Maybe we can just allow a little bit more leeway on the timing to pursue those questions. I don't know if we need to be rigid in saying a half hour each side. However you want to conduct it.

Mr. MCINTOSH. A little extra time for the entire panel after they have presented.

Mr. WAXMAN. Yes. Let them present their testimony, and then if the chairman would be indulgent with the Members to some extent. I know I probably would take 10 minutes rather than 5 minutes. So maybe we can just handle it on an informal basis.

Mr. MCINTOSH. If no one objects, I am very happy to do that.

OK. If all of the witnesses would please rise and repeat after me.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show that each of the witnesses answered in the affirmative.

Let me now turn to Mr. Peter Guerrero. If you could please summarize for us the findings of your draft report and any other remarks that you would like to make.

STATEMENTS OF PETER GUERRERO, DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY STANLEY CZERWINSKI, ASSOCIATE DIRECTOR; JIM DONAGAHY, ASSISTANT DIRECTOR; MITCHELL KARPMAN, MATHEMATICAL STATISTICIAN; AND ELLIOT LAWS, ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE

Mr. GUERRERO. Thank you, Mr. Chairman.

We are pleased to present the results of our examination of the times to complete the evaluation and cleanup of Superfund sites. This work was done at the request of the chairman of the House Government Reform and Oversight Committee, and we plan to issue a report on our findings to the committee next month.

We divided the Superfund process into two major segments: first, the evaluation phase that occurs from the time a site is discovered to when it is finally placed on the Superfund cleanup list; and second, the cleanup phase that occurs after listing, during which more site studies are done and cleanup remedies are selected, designed, and constructed. Each of these phases are represented in the charts to your left.

First, I would like to discuss the earlier of these phases, from the time of discovery to listing. As the chart illustrates—and that's the closest one to you—the sites that were listed in 1996 were discovered an average of 9.4 years earlier. While this is an improvement over 1995, it is longer than earlier listing times.

SARA requires EPA to evaluate sites for listing within 4 years of discovery. However, the percentage of sites for which EPA has made listing decisions within 4 years of discovery has decreased in each succeeding year, from 51 percent in 1987 to 36 percent in 1991, the last year for which it is possible to measure these percentages.

There are a number of reasons why the time from discovery to listing has increased over the years. A major factor was that the Superfund program started with a backlog of sites awaiting evaluation, so not all sites could be processed at once. Other factors include revisions to eligibility standards that require the re-evaluation of many sites, the need to seek State concurrence for listing, and reductions in the annual number of sites that EPA added to Superfund in more recent years.

This last factor will have a profound influence on listing times in the future. In recent years, EPA has concentrated on cleaning up sites that have already been listed. As a result, EPA has recently added an average of only 16 sites per year to the National Priorities List for cleanup. Yet somewhere between 1,400 and 2,300 more sites could potentially be added in the future.

I would now like to turn to the time it takes to complete cleanups after sites are added to the Superfund list, the time period represented by the next chart, the chart in the middle. As you can see, cleanup projects were completed in fiscal year 1996 onsites that had been placed on the Superfund list on an average of 10.6 years earlier.

As with listing, cleanup completion times have also increased over the history of the program. EPA set a goal in 1993 to complete cleanup within 5 years of a site's listing, using this as a reasonable benchmark for the program. We found that the percentage of cleanups within 5 years of listing has increased from 7 percent for sites listed in 1986 to 15 percent of sites listed in 1990.

Overall, EPA has completed construction of cleanup remedies at over 418 Superfund sites, and construction is underway at another 491 sites. The increase in cleanup times was accompanied by a marked increase in the time taken to select cleanup remedies or the study phase of the cleanup process, and a time, also, during which attempts are made to reach settlements with parties responsible for contamination of sites.

This study phase was completed in about 2½ years after listing in 1986, but took about 8 years after listing in 1996. EPA officials attributed this increase and the increase in listing times to the growing complexity of sites, efforts to reach settlements with parties responsible for contamination, and resource constraints.

In conclusion, Mr. Chairman, I would like to make a number of points. First, average times to cleanup and list sites have increased over the history of the program. Increasing cleanup times are a concern because of the large number of sites that could be listed

in the future, as well as the amount currently in the cleanup pipeline today.

As the third chart shows, while EPA has made progress at many sites, completing the construction of remedies at over 400 sites, construction work does still remain to be completed at up to 800 more. In addition, from 1,400 to 2,300 sites could be added to Superfund in the future.

Second, EPA has a number of reform initiatives underway to reduce timeframes and costs, but evidence that they are accomplishing this is largely anecdotal. Our analysis, while showing the progress of the program and the trends associated with the time required for key segments of the Superfund process, does not allow us to assess whether these reform initiatives are having the intended effect of lowering program timeframes and costs.

I should add that showing these effects is difficult, since these reforms were largely put into place in 1994, or more recently and, by EPA's own admission, could take up to a decade to show results.

Finally, measuring the results of a program as complicated as Superfund is a challenging task at best. The approaches we have used have the advantage of showing both how long it has taken to complete Superfund actions as well as whether Superfund's legislative and program goals are being met. They also highlight the growing times being spent deciding what to do with sites in comparison to the relatively short times actually spent cleaning them up.

This concludes my statement. As you know, we will be working with the committee and others to support the Congress as it works to reauthorize Superfund. I will be happy to answer your questions.

[The prepared statement of Mr. Guerrero follows:]

Statement by Peter F. Guerrero, Director, Environmental Protection Issues, Resources, Community, and Economic Development Division

Mr. Chairman and Members of the Subcommittee:

We are pleased to present the results of our examination of trends in the time taken to complete (1) evaluations of hazardous waste sites for placement on the National Priorities List (NPL)--the Superfund program's list of the nation's worst hazardous waste sites--and (2) cleanup of sites following their listing. This work was done at the request of the Chairman, House Government Reform and Oversight Committee. We plan to issue a report on our findings to the Committee within the next month. The pace of Superfund cleanups has been a long-standing concern of the Congress and the Environmental Protection Agency (EPA). In the 1986 Superfund Amendments and Reauthorization Act (SARA), the Congress set time goals for EPA to (1) evaluate sites for possible placement on the NPL and (2) begin various cleanup actions. EPA has also established targets for processing Superfund sites for budgeting and planning purposes.

In summary, we found that:

-- For sites listed in 1996, it took an average of 9.4 years from site discovery to final listing on the National Priorities List. While this is some improvement over 1995, it is still longer than earlier listing times. For sites listed from 1986 to 1990, it took an average of 5.8 years from discovery to listing. SARA requires EPA to evaluate nonfederal sites for listing, where warranted, within four years of their discovery.[1] Listing decisions were made within four years of discovery for 43 percent of the sites discovered from 1987 through 1991. A number of factors contributed to the long

[1]This statement focuses on nonfederal sites, since they make up about 87 percent of all Superfund sites. However, our upcoming report to the House Government Reform and Oversight Committee on Superfund evaluation and cleanup times will present data on both federal and nonfederal sites.

time needed to list a site, including a backlog of sites awaiting evaluation and EPA's emphasis on completing already listed sites.

-- Cleanup completion times have also lengthened. From 1986 to 1989, cleanup projects were finished, on average, 3.9 years after sites were placed on the National Priorities List. By 1996, however, cleanup completions were averaging 10.6 years. SARA did not set deadlines for completing cleanups within a certain number of years, but EPA set an expectation for fiscal year 1993 for its regions to complete cleanup within 5 years of a site's listing. At ten percent of sites listed from 1986 through 1990, cleanup projects were completed within 5 years of listing. Much of the time taken to complete cleanups is attributable to the early planning phases of the cleanup process, when cleanup remedies are selected. Less time has been spent on actual construction work at sites than on selecting remedies. EPA officials attributed the increased completion times for cleanups to the growing complexity of sites, efforts to reach settlements with parties responsible for site contamination, and resource constraints.

BACKGROUND

In 1980, the Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, to clean up highly contaminated hazardous waste sites. The act gave EPA the authority to clean up the sites or to compel the parties responsible for the contamination to perform the cleanups. As of November 6, 1996, there were 1,205 sites on the NPL and another 52 had been proposed for listing. One hundred fifty-one of the currently listed sites are federal sites. Currently, EPA has completed constructing cleanup remedies at 418 sites and has construction under way at another 491 sites.

Cleanup actions fall into two broad categories: removal actions and remedial actions. Removal actions are usually short-term actions designed to stabilize or clean up a hazardous site that poses an immediate threat to human health or the environment. Remedial actions are generally longer-term and usually costlier actions aimed at implementing a permanent remedy. Sites referred to EPA for consideration under Superfund are screened through a number of evaluations leading to a decision about whether to place the site on the NPL. Once listed, sites are further studied for risks and cleanup remedies are chosen, designed, and constructed. (See app. I for a more detailed description of the Superfund evaluation and cleanup processes.)

To promote timely cleanups, SARA required EPA to evaluate sites for listing within four years of their discovery if EPA determines that such evaluation is warranted.[2] In 1992, EPA developed techniques to speed up the evaluation and cleanup of sites. These techniques included the expanded use of removal actions and the merging of certain site evaluations. EPA pilot-tested these techniques in 1992 and declared them operational in 1994. For planning its Superfund activities, EPA set an expectation for 1993 that sites would be cleaned up within 5 years of being listed. EPA officials said that they have not formally revised the expectation, but now believe that sites will be cleaned up within 7 or 8 years of their listing.

For our review, we asked EPA to provide us with data on the time taken to evaluate sites for possible placement on the NPL and to complete cleanups of listed sites. The source of the data was EPA's Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), which is the official repository of Superfund data. To measure the time taken to

[2]SARA requires that this determination be made on the basis of a site inspection or a preliminary assessment.

evaluate sites for listing, we identified sites that were added to the NPL each year and calculated the time between their listing and their "discovery", i.e., their entry into CERCLIS. To measure the time for the cleanup process following listing, we identified the "operable units"[3] at which remedial actions had been completed each year and calculated the time between the end of the remedial action and the date the site was added to the NPL.

This use of a "date of event" analysis (NPL listing, completion of cleanup) was chosen because of its usefulness in showing the productivity and management of Superfund resources over time. It takes into consideration the actual number of listings or cleanup completions in a given year regardless of when sites were first discovered or listed on the NPL. Our approach is consistent with how EPA has measured the program's accomplishments.

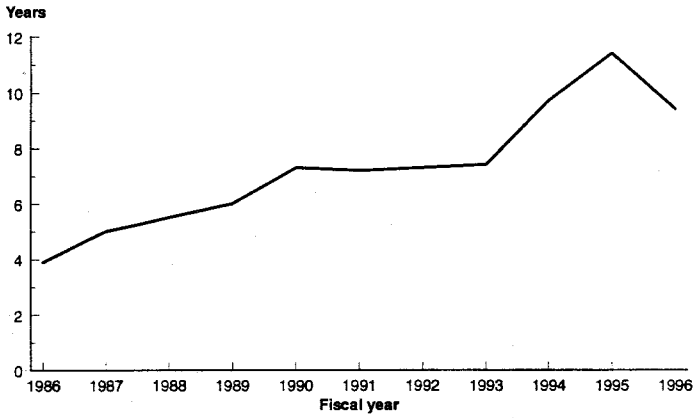
We also attempted to measure the trends in time taken to complete listings and cleanups, using SARA's and EPA's own standards as benchmarks. Because these standards set four and five year completion goals, our analysis was limited to sites discovered or listed not later than 1991. Because EPA's initiatives to speed up cleanups were introduced after this time, their effect on achieving the standards cannot yet be determined. We are, however, currently reviewing the implementation and possible effects of these initiatives.

PLACING A SITE ON THE NPL TAKES LONGER

[3]EPA may divide a site into two or more "operable units" corresponding to different physical areas at a site or different environmental media (such as soil or groundwater) to be cleaned up. There are an average of 1.8 operable units at nonfederal Superfund sites.

The time between discovering a site and placing it on the NPL has increased over the life of the Superfund program. (See fig. 1.)

Figure 1: How Long It Took on Average to Place Sites on the NPL



No sites were placed on the NPL in fiscal years 1988 and 1992. Data for fiscal year 1996 exclude three sites that were added to the NPL without undergoing the usual evaluation because they posed imminent public health risks.

As figure 1 indicates, sites listed in fiscal year 1996 had been discovered an average of 9.4 years earlier, down from 11.4 years in fiscal year 1995.[4] SARA required EPA to evaluate nonfederal sites for listing, where warranted, within four years of their discovery. For those sites discovered from fiscal years 1987 through 1991, 43 percent had decisions regarding whether or not to list the site made within four years of discovery. However, the percentage of sites for which decisions were made within four years of discovery

[4]Sites listed in the first quarter of fiscal year 1997 had discovery dates averaging 11.2 years before listing. The sites added to the NPL during this first quarter were discovered as recently as 1993 and as long ago as 1979.

decreased in each succeeding year from 51 percent in fiscal year 1987 to 36 percent in fiscal year 1991.

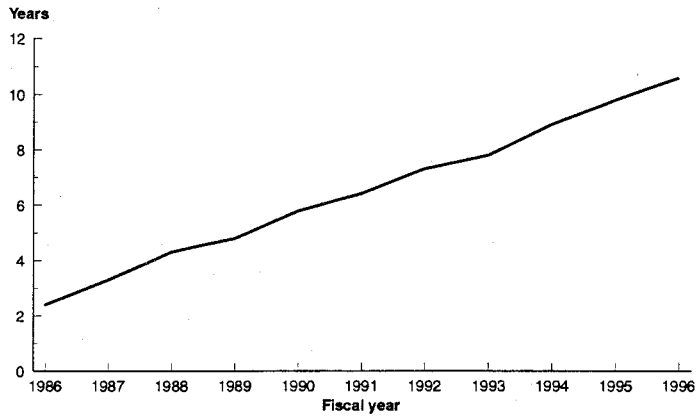
Although average processing times have lengthened, EPA can move quickly to list some sites if circumstances warrant. For example, in 1996, it listed three sites within about 9 to 12 months of their discovery when the Public Health Service's Agency for Toxic Substances and Disease Registry issued a public health advisory concerning the sites. EPA used an expedited process that bypassed its normal evaluation process to list these sites. In addition, EPA may undertake removal actions at sites to deal with imminent threats before the sites are listed. However, listing is necessary before the full range of problems presented by many sites can be addressed under Superfund.

The increase in the time taken to complete site listing is primarily a result of delays in processing sites during the end stage of the listing process, that is, after the sites have been inspected and the final analysis needed to evaluate their eligibility is done. (See app.I for a description of the Superfund process for evaluating sites for listing and cleanup.) The time to complete this end stage rose from 1.7 years for sites proposed for the NPL in fiscal year 1986 to about 6 years for sites proposed for the NPL in fiscal year 1996.

CLEANING UP SITES IS TAKING LONGER

The average time between placing sites on the NPL and completing cleanups at these sites increased from 2.4 years for sites completed in 1986 to 10.6 years for sites completed in 1996. Figure 2 shows, for fiscal years 1986 through 1996, the average time between placing sites on the NPL and completing the cleanups at the operable units at these sites.

Figure 2: How Long It Took on Average to Complete Superfund Cleanup Projects



As the figure shows, the average time taken to complete cleanups of operable units has grown progressively longer. In 1996, cleanup completions averaged 10.6 years for operable units. SARA did not set deadlines for completing cleanups within a certain number of years, but EPA set an expectation for fiscal year 1993 that its regions would complete cleanup within five years of a site's listing. Ten percent of sites listed from 1986 through 1990 had cleanup completions on at least one operable unit within 5 years of listing.[5] The percentage of sites with five-year completions increased from 7 percent for sites listed in fiscal year 1986 to 15 percent for sites listed in fiscal year 1990.

The increase in overall cleanup times was accompanied by a marked increase in the time it has taken to complete the selection of cleanup remedies--the study phase of the cleanup process and a time

[5]Four percent of the sites listed from 1986 to 1990 had cleanups at all operable units within five years of listing.

during which attempts are made to reach settlements with parties responsible for contaminating sites. Sites that completed this phase in 1986 had been listed an average of about 2-1/2 years earlier and sites that completed the phase in 1996 had been listed an average of about 8 years earlier.

FACTORS INFLUENCING THE TIME
TAKEN TO LIST AND CLEAN UP SITES

The Superfund database, which was the primary source for the data presented in this statement, does not contain all of the information needed to fully explain the reasons for the changes in evaluation/listing and cleanup times over the history of the program. However, our past reviews and discussions with EPA officials indicate some of the factors that have lengthened listing and cleanup times.

There are a number of reasons why the time from discovery to listing has increased over the years. A major factor was that the Superfund program started with a backlog of sites awaiting evaluation so that not all sites could be processed at once.[6] In addition, program changes--such as revisions to eligibility standards requiring the reevaluation of many sites, the need to seek state concurrence for listing sites, and reductions in the annual number of sites that EPA added to Superfund--have also caused delays. In addition, EPA reallocated its budget between 1994 and 1996, cutting funds for assessing sites by some 50 percent. EPA officials said that the agency's current priority is to finish cleaning up sites that have already been listed. The challenge for the future is indicated by the large number of sites that could enter the program in the future and the small number of sites that have been admitted to the Superfund program in recent

[6] Of the 40,665 sites referred to EPA for Superfund evaluation through 1996, 14,697 came into the program by 1982.

years. In a 1996 report,[7] we estimated that between 1,400 and 2,300 sites could be added to Superfund in the future. In contrast, an average of 16 sites per year were admitted to the program in the period from 1992 through 1996.

EPA officials said that the upward trend in cleanup times might be linked to the completion of more difficult cleanups. Our work supports this explanation. In September 1994, we reported[8] that EPA's data revealed longer average cleanup times for ongoing projects than for those already completed. In that report, we said that despite EPA's efforts to expedite cleanups, cleanup times might grow longer because these ongoing projects were more complex. EPA officials also said that the time taken to find the parties responsible for contaminating sites and reach cleanup settlements with them can increase cleanup times. The officials thought that funding had affected the pace of cleanups. For example, they said that because of budget constraints, EPA was not able to fund $200 million to $300 million in cleanup projects in fiscal year 1996. In addition, EPA has shifted funding away from selecting remedies and toward the design and construction phases of the cleanup process. As indicated, the Superfund phase ending in the selection of remedies has increased greatly over the years.

OBSERVATIONS

Sites that have recently completed the Superfund listing process have taken over 9 years and those that have recently completed the cleanup process have taken over 10 years. These completion periods have generally lengthened over the history of the program.

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[7] Impact on States of Capping Superfund Sites (GAO/RCED-96-106R, Mar. 18, 1996).

[8] Superfund: Status, Cost, and Timeliness of Hazardous Waste Site Cleanups (GAO/RCED-94-256, Sept. 21, 1994).

Increasing completion times are a concern because of the amount of remaining listing and cleanup activity still to be addressed in the Superfund program.

EPA has made progress at many sites--completing the construction of remedies at 418 sites--but construction work remains to be completed at about 800 NPL sites, and 1,400 to 2,300 sites could still be added to Superfund in the future. EPA officials believe that recent initiatives will speed up both the listing and cleanup of sites. They told us that they expect to report on the effects of some of these initiatives in the near future.

Our analysis identified where times have risen, but further evaluation is needed to pinpoint the causes. We will be working with this Committee and others during the year to help answer some of these questions. For example, we are currently reviewing EPA's recent initiatives to speed up site processing and implement other administrative reforms.

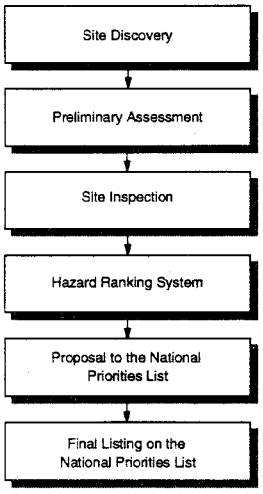
Mr. Chairman, this concludes my prepared statement. I will be happy to respond to your questions or the questions of Committee members.

THE SUPERFUND PROCESS

STEPS IN THE PROCESS OF LISTING A SITE

The Environmental Protection Agency's (EPA) regulation implementing the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) outlines a formal process for placing hazardous waste sites on the National Priorities List (NPL). (See fig.I.1.)

Figure I.1: How Sites Get on the NPL



Source: EPA.

The listing process starts when EPA receives a report of a potentially hazardous waste site. State governments or private citizens most often report nonfederal sites. EPA enters potentially contaminated private sites into a database known as the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). EPA or the state in which a potentially contaminated site is located then conducts a preliminary assessment to decide whether the site poses a potential threat to human health and the environment.

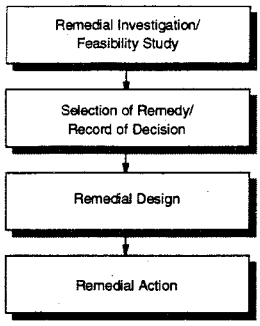
If the site presents a serious, imminent threat, EPA may take immediate action. If the preliminary assessment shows that contamination exists but does not pose an imminent threat, or if the site continues to pose a problem following an immediate action, EPA may proceed to the next step of the evaluation process, the site inspection, which takes a more detailed look at possible contamination. If at any point the site is found not to pose a potential threat, the site can be eliminated from further consideration under CERCLA.

Using information from the site inspection, EPA applies the hazard ranking system to evaluate the site's potential risk to public health and the environment. The hazard ranking system is a numerically based scoring system that uses information from the preliminary assessment and the site inspection to assign each site a score ranging from 0 to 100. This score is used as a screening tool to determine whether a site should be considered for further action under CERCLA. Sites with a score of 28.50 or higher are considered for placement on the NPL. EPA first proposes a site for placement on the NPL and then, after receiving public comments, either places it on the NPL or removes it from further consideration. Hazardous waste sites on the NPL represent the highest priorities for cleanup nationwide.

STEPS IN THE PROCESS OF CLEANING UP SITES

EPA's regulation implementing CERCLA also outlines the remedial process for cleaning up sites on the NPL. (See fig.I.2.)

Figure I.2: How Sites Are Cleaned Up



Source: EPA.

Remedial responses to NPL sites consist of several phases. First, through the remedial investigation and feasibility study, conditions at a site are studied, problems are identified, and alternative methods to clean up the site are evaluated. Then, a final remedy is selected, and the decision is documented in a record of decision. Next, during an engineering phase called the remedial design, drawings and specifications are developed for the selected remedy. Finally, in the remedial action phase, a cleanup contractor begins constructing the remedies according to the remedial design. Once EPA and the state in which the site is located determine that the work at a site has achieved the desired cleanup goals, the site can be removed (deleted) from the NPL.

(160329)

Mr. MCINTOSH. Thank you very much, Mr. Guerrero.

Let me turn now to Mr. Laws. If you could share with us your testimony. Thank you.

Mr. LAWS. Good morning, Mr. Chairman. Thank you very much. I have a written statement for the record.

I am pleased to appear here today to discuss the current status of the Superfund program, focusing on the accomplishments of our administrative reforms. Mr. Chairman, as you know, the agency has a policy that its representatives not testify on draft reports. Therefore, I will not be able to comment today on GAO's draft report and testimony, nor will I be able to answer questions concerning the draft report and testimony.

I will be happy to answer questions about the current status of the Superfund program, and once the GAO report is completed and the administration has had an opportunity to review it, an agency representative will be pleased to testify before the subcommittee about the report.

Today, the Superfund program is hard at work cleaning up toxic wastesites and protecting human health and the environment. Unfortunately, the current success of the program is seldom accurately characterized. In the past few weeks, several public statements were made that only 30 Superfund sites have been cleaned up. Statements like that are so patently false that I would like to take this opportunity to set the record straight.

Mr. Chairman, today 418 Superfund sites have been cleaned up. More than 480 additional Superfund sites have cleanup construction underway. In other words, 70 percent of all Superfund sites are either cleaned up or under cleanup construction. Today, EPA is protecting thousands of families along the Gulf Coast of the United States by cleaning up homes and small businesses poisoned by the misapplication of the pesticide methyl parathion.

This is just one of the sites that the Superfund program has addressed, immediate threats to human health and the environment. We have performed over 4,000 of these emergency cleanup actions.

The current success of the Superfund program can, in part, be attributed to the administrative reforms undertaken by EPA and the Clinton administration. Three rounds of administrative reforms and selected Federal facility reforms were developed to increase the pace of cleanup and ensure the selection of commonsense, protective cleanups, and increase the fairness of the liability system, while reducing litigation and transaction costs.

These reforms are working. In a report issued in December 1996, the Superfund Settlements Project acknowledged the agency's substantial track record since the agency began implementing the administrative reforms. I believe others have made reference to that report, as well. This is a private analysis of just a sample of our administrative reforms, and it supports the findings of our Superfund Administrative Reforms Annual Report for fiscal year 1996.

Our administrative reforms were based on a fundamental set of principles. EPA set out to increase the pace of cleanups, lower the cost of cleanup, while maintaining long-term protection of human health and the environment, and promote fairness in the Superfund liability system, while reducing litigation and trans-

action costs. We sought to involve States and communities in Superfund decisionmaking, and promote the economic redevelopment of Superfund and brownfields sites.

As I mentioned, pace of cleanup is one of the program areas that EPA administrative reforms have focused on. Historically, the pace of Superfund cleanups has been affected by many factors. In the early years of the program, there was a tremendous agency learning curve on how best to cleanup Superfund sites. Congressional review of site-specific listing and remedy decisions and lapses in program funding have also affected the pace of cleanup.

I will briefly discuss some of the administrative reforms, and a more detailed summary of them appears in my written testimony. To increase the pace of cleanup, EPA is using more standardized or presumptive remedies. These remedies are based upon the scientific and engineering experience which we have gained from hundreds of cleanups performed or overseen by the agency. Presumptive remedies allow us to simplify and expedite the remedy selection process.

To reduce cleanup costs, EPA has established a Remedy Review Board to review proposed high-cost remedies at Superfund sites. In fiscal year 1996, the board reviewed 12 proposed cleanup remedies, resulting in potential future savings of $15 million to $30 million in cleanup costs.

We also established a technical review process where targeted remedies are reviewed to determine whether new cleanup technologies may be applied that will reduce the cost of cleanup while still providing the long-term protection of human health and the environment. These reviews alone have provided approximately $280 million in potential future cost savings.

EPA is now offering orphan share compensation to encourage settlements and reduce litigation and transaction costs. Under the new orphan share administrative reform, EPA offers to forgive past costs and future oversight costs of settling parties to cover all or a portion of the orphan share represented by insolvent parties. In fiscal year 1996, the agency offered more than $57 million in orphan share compensation to responsible parties at 24 Superfund sites.

EPA has increased liability fairness and efficiency by publicly offering to reach no-cost—that is, zero-dollar—settlements to the smallest waste contributors, known as de micromis parties, to provide litigation protection from large waste contributors. EPA is also aggressively entering into de minimis settlements to get small waste contributors quickly out of the Superfund liability system. More than 14,000 de minimis settlements have been reached by the agency; more than two-thirds of those accomplished during the past 4 years.

States are now assuming more responsibility for waste cleanups under several administrative reforms. EPA is sharing authority to select cleanup responsibilities with qualified States and tribes. States and tribes will be able to select remedies at Superfund sites with minimal EPA oversight.

A recently issued EPA memorandum that established criteria for voluntary cleanup programs is paving the way for additional memorandums of agreement to be entered into between States and

EPA. These agreements govern the division of responsibilities for wastesite cleanups. Eight States have agreed to MOAs, and several more agreements are close to completion.

EPA is expanding its efforts to redevelop abandoned and contaminated properties throughout the Nation. We have funded 76 brownfields pilots to encourage State and local governments and private developers to identify and assess contaminated properties and work together to clean up and redevelop those properties.

Mr. Chairman, the Clinton administration is committed to making the Superfund faster, fairer, and more efficient. The Superfund administrative reforms have gone a long way to help us meet that goal.

That concludes my testimony, Mr. Chairman. I would be pleased to answer any questions from the subcommittee members concerning the current status of the program.

[The prepared statement of Mr. Laws follows:]

STATEMENT OF
ELLIOTT P. LAWS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON NATURAL GROWTH, NATURAL RESOURCES,
AND REGULATORY AFFAIRS

FEBRUARY 13, 1997

INTRODUCTION

Good morning, Mr. Chairman, and Members of the Sub-Committee. I am pleased to have this opportunity to appear before you to discuss the Agency's accomplishments in fundamentally improving the Superfund program. We understand the Subcommittee has been concerned about the November 22, 1996 draft report prepared by the General Accounting Office (GAO) reviewing Superfund cleanups. However, it is EPA policy not to testify on GAO draft reports, as changes may occur between the time EPA reviews and comments on the report and the final release.

For that reason, my primary purpose today is to provide you an overview of the current status of the program, and the many administrative changes that have made Superfund a fundamentally different program, than that of just four years ago. Through three rounds of Administrative Reforms, EPA has produced significant changes in the Superfund program, ranging from national programmatic changes, to changes that address individual sites at every stage of the cleanup and enforcement processes.

Though broad in scope, these changes have all been implemented within the context of EPA's fundamental principles of reform:

- **Increasing the pace of cleanups**
- **Lowering the cost of cleanups, while protecting public health and the environment over the long-term**
- **Promoting fairness in the liability scheme, while reducing transaction costs and litigation**
- **Involving the community and States in decision making**
- **Promoting economic redevelopment at Superfund sites**

Though the Superfund program has been criticized in the past due to problems with early implementation, the program's recent accomplishments are substantial. For example, the Agency has completed cleanup construction at 418 sites on the National Priorities List (NPL). As a result of the President's leadership and commitment to protect human health and the environment, the President's budget request for Fiscal Year 1998 would raise the goal to 900 completions by the year 2000, representing approximately two-thirds of sites currently on the NPL. Additionally, since 1981, approximately 4,000 emergency cleanup actions have been completed, with over 1,200 of these actions occurring at sites on the NPL.

The Superfund Enforcement Program's accomplishments are also substantial. Currently, responsible parties perform more than 70% of Superfund long-term cleanups, saving taxpayers more than $12 billion. As an important goal of the

Administrative Reforms, EPA continues to promote fairness in the Superfund enforcement program by reaching settlements with more than 14,000 small parties at Superfund sites. EPA is also providing orphan share compensation to responsible parties willing to negotiate long-term cleanup settlements.

Superfund Administrative Reform accomplishments are being acknowledged outside the Agency as well. In a recent report, the Superfund Settlements Project (SSP), performed an in-depth study of the implementation of Round 3 reforms in Regions 1 and 3. This report, published in December 1996, acknowledges EPA's "substantial" track record "since EPA began implementing the October 2, 1995 administrative reforms...especially in light of the severe obstacles that EPA encountered during fiscal year 1996 as it began implementation of these reforms. These positive comments, from a group of large corporations involved in many Superfund cleanups, echo the Agency's recent Superfund Administrative Reforms Annual Report, for Fiscal Year 1996, which details other significant program accomplishments.

INCREASING THE PACE OF CLEANUPS

The completion of 418 Superfund toxic waste site cleanups (as of January 31, 1997) is just one indication of the record pace EPA has set for cleaning up Superfund sites. At the Lord-Shope Landfill near Erie, Pennsylvania (the 400th site to be cleaned up) parties used innovative technology to remove contaminants. Tons of industrial

wastes had been dumped over 20 years (including debris, rubber scrap, organic and inorganic chemicals, solvents, cooling acids, and caustic agents) that resulted in ground water contamination. Today, the community no longer needs to worry about the safety of drinking water, the impact on farmland near the site, the effect on property values of their homes and businesses, or the possibility of children wandering onto the site and playing among the drums of toxic chemicals.

SACM

EPA (with the support of the Corps of Engineers and the Bureau of Reclamation and their cleanup contractors) also has implemented reforms which streamlined its rapid action cleanup authority. EPA's Superfund Accelerated Cleanups Model (SACM) accelerates cleanup and risk reduction at sites by consolidating site-assessment into a one-step process. SACM includes the following initiatives: taking early actions while assessing long-term cleanup; using "presumptive" remedies where appropriate; initiating enforcement activities earlier; and addressing the worst threats to people and the environment first. SACM reduces cleanup time through a single, continuous site assessment and early action process.

Presumptive Remedies

The Agency is saving time and money by using standardized or "presumptive" remedies for certain types of sites. Presumptive remedies are based on scientific and engineering analyses performed at similar Superfund sites and are used to eliminate duplication of effort, facilitate site characterization, and simplify analysis of cleanup

options. EPA issued presumptive remedy guidances for the following: municipal landfill sites; sites with volatile organic compounds in soil; wood treater sites (with an update two years later); and a ground water presumptive response strategy. Regions are reporting significant reductions in costs and time required to complete remedies. A recent Office of Inspector General report focused on an independent review of the use of a presumptive remedy and concluded that "Use of a *Presumptive Remedy* increased consistency in decision making by taking advantage of lessons learned at similar sites, and allowed speedup of the Feasibility Study process."

PROVIDING PROTECTIVE CLEANUPS AT LOWER COSTS

EPA has initiated a number of administrative reforms that aim to promote national consistency and the use of up-to-date technology and experience gained from over 15 years of implementing the program. These reforms will lower costs, while maintaining long-term protection of human health and the environment.

National Remedy Review Board

EPA has achieved significant success in creating substantial future cost reductions for parties at complex, high cost Superfund sites across the country, by creating a national board of technical and policy experts within EPA to review of high cost, long term cleanups. This newly established National Remedy Review Board, comprised of both Headquarters and Regional experts is providing targeted review of these cleanup plans, so that overall program pace is not affected, prior to final remedy

selection. Overall, the Board's analysis indicates potential reductions of $15-30 million in total estimated future costs for reviews completed during FY96.

Using Technology and Science Updates to Save Money

The Agency's preliminary analysis indicates that approximately $280 million in future cost reductions may result from the Agency's review, and updates to earlier remedy decisions made in the early years of the Superfund program. These early remedies were based on "state-of-the-knowledge-and-practice" available at the time. Where science and technology have advanced and adequate levels of public health and environmental protection are assured, EPA is revising remedies where future cost reductions can be achieved while still maintaining appropriate levels of protection, as well as the current pace of the program.

Clarifying the Role of Cost in the Remedy Selection Process

Through a recently issued fact sheet, EPA summarized information on the role of cost in the Superfund program which was, prior to this point, scattered in guidance, statutes, and regulations. EPA's aim is to ensure that all stakeholders involved in the Superfund process fully understand the important role of cost in remedy selection under both existing law and policy and in recent initiatives aimed at enhancing the cost-effectiveness of remedial actions.

Better Land Use Assumptions in Remedy Selection

EPA has improved its cleanup decisions by consistently using reasonable assumptions about current and future land use. Recognizing that land may be appropriate for industrial uses, rather than residential uses, can yield a more realistic risk assessment and more cost-effective remedy selection. EPA is working with local land use planning authorities, other government officials and the public as early as possible during site investigation to discuss land use issues. EPA also is making extra efforts to reach out to communities which may have environmental justice concerns to ensure that they are fully informed and able to participate in these decisions. An analysis of EPA's Records of Decision (RODs) from 1991 through 1993, indicate that 60% of RODs realistically include a land use scenario other than residential land use, typically where there is no residential land use on-site or adjacent to the site.

Setting Priorities for Cleanups

To ensure that available funds are directed to the highest priority response projects on a *national* basis, EPA established a National Risk-Based Priority Panel (Panel) in August 1995. Prior to this reform, individual Regions established the relative priority of their cleanup projects which were then funded on a first-come, first-served basis. This reform established a national priority system to fund cleanups based on the principle of "worst problems first." The Panel evaluates proposed cleanup actions, looking at the following factors: risks to humans and the ecology; stability and characteristics of contaminants; and economic, social and program management considerations. With the exception of emergencies and the most critical removal

actions, cleanup projects are generally funded in order of priority based on the recommendations of the Panel. By early 1997, the panel had ranked more than 150 sites and operable units approaching $1 billion in cleanup costs.

PRPs Performing Risk Assessments

High quality risk assessments can often be performed faster and cheaper by PRPs under EPA's supervision, saving taxpayer money and accelerating the pace of cleanup. In January 1996, EPA issued a directive encouraging the performance of Superfund site risk assessments by PRPs in appropriate cases. Eight Regions have now identified Superfund sites for PRP-led risk assessments.

PROMOTING FAIRNESS IN ENFORCEMENT

A core principle of the Superfund program is that the cost of cleaning up toxic waste sites should be borne by the parties responsible for the waste. EPA's "Enforcement First" strategy has assured that responsible parties perform or pay for more than 70% of long-term cleanups, thereby conserving the Superfund trust fund for cleaning up sites for which no viable responsible parties can be identified.

Over the course of the Superfund program's implementation, however, stakeholders have expressed a variety of concerns regarding the fairness of the liability system. Issues related to excess litigation and associated transaction costs, the perceived inequities in the issuance of cleanup orders, and the liability of parties contributing small amounts of hazardous substances to Superfund sites, parties that

have limited assets, and parties that disposed of municipal solid waste, have all contributed to criticisms of the program. Most of these criticisms stem from the way private parties, rather than EPA, have chosen to litigate claims for cleanup costs. Through Administrative reforms, EPA has addressed many of these concerns.

Recognizing the Orphan Share

EPA has fundamentally changed the way it conducts settlements at Superfund sites through implementation of its 1996 "orphan share compensation" policy. The policy encourages parties to settle, rather than to litigate, and enhances the fairness and equity of settlements. Without a settlement, responsible parties at a site are potentially liable under the Superfund law for the entire cost of the cleanup, including the share that might be attributable to other parties that are insolvent or defunct. Under the new orphan share reform, however, EPA offers to forgive a portion of its past costs and projected future oversight costs in cleanup settlements to cover some or all of the orphan share at the site. This creates a major incentive for responsible parties to agree to perform the cleanup without litigation, and thus reducing transaction costs. In FY96, the Agency offered over $57 million in orphan share compensation to potential settling parties across the United States. The President's budget continues Administration support for reforms that enhance fairness by providing $200 million of mandatory spending to fund orphan shares.

Getting the "Little Guy" Out Early

EPA's reforms are removing thousands of small volume waste contributors from the liability system. PRPs that are liable for cleanup costs have sometimes sued huge numbers of small businesses that had little or no connection to the toxic contamination – sometimes simply by naming every business in the local yellow pages as a defendant in a contribution lawsuit. EPA's reforms have responded to the burden this can place on parties that made a very limited contribution to the pollution at a site by using its settlement authority to get small waste contributors out of Superfund litigation. To date, the government has completed settlements with over 14,000 small volume contributors of hazardous waste at hundreds of Superfund sites. These settlements with the federal government protect the settling parties from expensive private contribution suits. In addition, EPA has stepped in to prevent the big polluters from dragging untold numbers of the smallest "de micromis" contributors of waste into contribution litigation by publicly offering to any such party $0 (i.e., no-cost) settlements that would prevent lawsuits by other PRPs.

Site Specific Special Accounts

Prior to the Administrative Reforms, any funds recovered in early settlements at a particular site were usually deposited in the Superfund Trust Fund, and could not be spent until appropriated. When appropriated, these funds could be spent at other sites. Through the use of Site Specific Special Accounts, EPA is able to direct settlement funds, as well as interest earned on those dollars, to future response actions at a

specific site. As of August 31, 1996, $226 million in principal, and $35 million in interest, have been set aside for exclusive use at specific sites.

Equitable Issuance of UAOs

To address the criticism that EPA routinely issues cleanup orders under section 106 of the Superfund law (unilateral administrative orders or UAOs) only to a subset of the parties identified at a particular site, EPA has established a protocol for requiring a detailed explanation of the basis for not including certain parties when issuing a UAO. This new requirement will ensure greater equity amongst parties receiving UAOs, as EPA will issue these orders to the largest number of manageable PRPs at each site.

Piloting Allocations

EPA is conducting pilot projects that test a fundamentally different approach to the allocation of Superfund costs (called the allocations pilots) in order to promote fairness in settlements. Under this approach, PRPs may settle their liability based upon their allocated share of cleanup costs. A neutral party known as an allocator, selected by parties to the process, conducts an out-of-court allocation. The allocator assigns shares of responsibility for cleanup costs among all PRPs at a site. Under this scheme, EPA expects to pay the "orphan share," which includes the shares of parties which are defunct or insolvent. To date, EPA has offered allocation pilots at 12 Superfund sites. A great deal has been learned about the strengths and weaknesses of the allocation process through the implementation of allocation pilots. Initial pilot

results indicate the need for site-specific flexibility and further review of alternative dispute mechanisms to help resolve disputes among parties at Superfund sites.

Reducing Costs for PRPs Through Reduced Oversight

PRPs incur costs at sites in part because of EPA's need to oversee the quality of cleanup work. Oversight is the process EPA uses to ensure that all studies and work performed by PRPs are technically sound and comply with statutory requirements, regulations, guidances, policies, and the signed settlement agreement. Oversight may include submission of reports for approval, meeting interim cleanup milestones, or the scheduling of site visits. As the Superfund program matures, parties performing cleanup work have developed a considerable body of experience in conducting response activities at sites. EPA can reduce oversight of such parties while continuing to exercise sufficient oversight to ensure that the work is performed properly and in a timely manner.

Already, EPA Regions have identified approximately 100 sites where reductions in oversight of ongoing work for cooperative and capable PRPs have occurred or will occur -- significantly reducing PRP costs at some of these sites. EPA also may look at opportunities to involve communities in deciding the appropriate level of PRP oversight.

INVOLVING COMMUNITIES AND STATES IN DECISION MAKING

The Agency supports the principle that communities must be involved in the cleanup process from the time a site is discovered to the time it is finally cleaned up.

Involving Communities in Remedy Selection

EPA is promoting "consensus-based" approaches to the remedy selection process by involving community stakeholders in site pilot projects. This effort is intended to empower local citizens and other stakeholders to help develop mutually acceptable, common sense remedies that meet statutory and regulatory requirements. For example, at the Lower East Fork Poplar Creek Site in Oak Ridge, Tennessee, the cleanup strategy, agreed to in August 1995, reflected the concerns of the local community in the remedy selection process. This included input into a change in cleanup goals. Through a citizen working group established by the Department of Energy, working in partnership with EPA and the State of Tennessee, the citizens' influence on the remedy selection decision averted the expenditure of more than $100 million of cleanup costs while protecting human health and the environment in a more timely manner.

Regional Ombudsmen

EPA established an Ombudsman in every Region to serve as a direct point of contact for stakeholders to address their concerns at Superfund sites. Prior to this reform, stakeholders raised concerns with Regional personnel, but had no formal mechanism for having their issues elevated. The Ombudsmen now serve as facilitators for stakeholders on concerns that have not been resolved between Regional personnel

and the stakeholder through informal means. The Ombudsman reports to a top Regional management official in every Region to assure management attention to issues raised.

Improving Public Access to Superfund Information

EPA recognized that improving communication with stakeholders and improving access to Superfund information will help the public become more aware of, and informed about, Superfund. EPA is using electronic tools to improve communication, including having sites for both the Office of Emergency and Remedial Response (OERR) and the Office of Site Remediation Enforcement (OSRE) on the Internet, with separate pages devoted to Superfund reform. Each Region also is developing Internet "home pages" which will include information on Regional Superfund programs, such as Superfund site lists, site-specific information, successful site cleanup actions, and links to State Superfund activities.

State Programs Speed Cleanup of Non-NPL Sites

EPA recognizes the important role that State environmental agencies have in encouraging economic redevelopment of brownfields. EPA plans to provide $10 million, earmarked in FY97 appropriations, to encourage the development or enhancement of State programs that encourage private parties to voluntarily undertake early protective cleanups of less seriously contaminated sites, thus accelerating their cleanup and their redevelopment. EPA recently issued a memorandum setting out an interim approach for its relations with State voluntary cleanup programs. The

memorandum includes criteria for State voluntary cleanup programs that are enabling EPA and the States to start negotiating a division of labor between EPA and the States in memoranda of agreement (MOAs). Even before these criteria were set out, eight States worked out MOAs with EPA regarding sites cleaned up under voluntary cleanup programs.

Greater Power for States in Picking Remedies

EPA is sharing its authority with qualified States and Tribes to select remedies and decide which sites to list on the NPL. States selected for this reform enter into agreements through which they conduct the remedy selection process, consistent with applicable law and regulations. Participating States supervise the entire remedy selection process with minimal EPA oversight or involvement, giving the State significantly more control than usual over NPL site cleanups, and maximizing EPA resources, which can then be used at other sites.

PROMOTING ECONOMIC REDEVELOPMENT

EPA is promoting redevelopment of abandoned and contaminated properties across the country that were once used for industrial and commercial purposes ("brownfields"). While the full extent of the brownfields problem is unknown, the United States General Accounting Office estimates that approximately 450,000 brownfields sites exist in this country, affecting virtually every community in the nation. EPA believes that environmental cleanup should be a building block, not a stumbling block,

to economic development, and that cleaning up contaminated property must go hand-in-hand with bringing life and economic vitality back to communities. EPA's Brownfields Economic Redevelopment Initiative places a new focus on brownfields. The Brownfields reforms are directed toward empowering States, communities, and others to work together to assess, safely clean up, and sustainably reuse these sites. EPA efforts are being accomplished through the Brownfields Action Agenda – an outline of specific actions the Agency is conducting.

Brownfields Pilots are Encouraging Redevelopment

The Brownfields Assessment Pilots form a major component of the Brownfields Action Agenda. EPA exceeded its commitment to fund at least 50 pilots by actually funding 76 pilots at up to $200,000 each by the end of 1996. These two-year pilots are intended to generate further interest in Brownfields redevelopment by bringing together public and private efforts including Federal, State, and local governments. The Brownfield pilots will develop information and strategies that promote a unified approach to site assessment, environmental cleanup, and redevelopment. Many different communities are participating, ranging from small towns to large cities. Stakeholders tell the Agency that Brownfields development activities could not have occurred in the absence of EPA efforts. As the National Community Reinvestment Coalition (NCRC) said "[W]e wholeheartedly support the EPA's Brownfields Economic Redevelopment Initiative. NCRC believes that [EPA's] multifaceted initiative represents

a significant step forward by the Administration in working with distressed communities on the local level in their revitalization efforts."

Getting Sites off the "List"

Prior to reform, EPA kept track of all potential hazardous waste sites in an inventory known as the Comprehensive Environmental Response and Liability Information System (CERCLIS). Even sites where no further Federal Superfund interest was warranted remained in the CERCLIS inventory. This practice led to unintended barriers to the redevelopment of these properties because sites listed in CERCLIS could be automatically considered risky by some lenders, making it difficult for potential purchasers to secure loans to develop these properties. To avoid this result, EPA redefined CERCLIS, deleting or archiving sites from the active CERCLIS inventory. EPA has archived over 27,000 sites (*e.g.*, sites where 'no further federal remedial action [is] planned') from CERCLIS to date, and EPA expects to archive over 1,000 additional sites from CERCLIS per year over the next several years.

Deleting Clean Parcels from the NPL

Prior to the Administrative Reforms, EPA's policy had been to delete sites from the NPL only after evaluation of the entire site. However, deletion of entire sites does not communicate the successful cleanup of portions of those sites. Total site cleanup may take many years, while portions of the site may have been cleaned up and become available for productive use before cleanup has been completed at other portions of the site. Some potential investors or developers may be reluctant to undertake economic

activity at a cleaned up portion of real property that is part of a site listed on the NPL. This reform allows EPA to delete portions of sites, as appropriate, upon the receipt of petitions from interested parties, allowing redevelopment to occur quickly. To date, four parcels are now in the deletion process.

Removing Redevelopment Barriers Based on Liability Concerns

EPA is promoting redevelopment of contaminated properties by protecting prospective purchasers, lenders, and property owners from Superfund liability. EPA's "prospective purchaser" policy is stimulating the development of sites where parties otherwise may have been reluctant to take action by clarifying (through agreements known as "prospective purchaser agreements") that bona fide prospective purchasers will not be responsible for cleaning up sites where they did not contribute to or worsen contamination. EPA issued new guidance in May 1995, which allowed the Agency greater flexibility in entering into such agreements. The new guidance expanded the universe of sites eligible for such agreements to include instances where there is a substantial benefit to the community in terms of cleanup, creation of jobs, or development of property. Of the 45 agreements to date, over 50% have been reached since issuance of the May 1995 guidance. At the Indiana Woodtreating Site near Bloomington, Indiana, the work performed under a prospective purchaser agreement will prevent contaminants from entering Clear Creek, which is a drinking water source for the City of Bloomington, Indiana.

People owning property under which hazardous substances have migrated through ground water also feared liability under the statute. EPA responded by announcing that it will not take enforcement actions under CERCLA against owners of property situated above contaminants which have migrated in ground water, but where the property is not also a source of contamination. Further, EPA also will consider providing protection to such property owners from third party lawsuits through a settlement that affords contribution protection.

EPA has given reassurance to the lending industry and to government entities acquiring property involuntarily. EPA outlined in guidance what it considered appropriate actions a lender may undertake without becoming a liable party. In September 1996, Congress passed legislation very similar to EPA policy and guidance on lenders. EPA also is providing assurances ("comfort/status letters") in appropriate circumstances to new owners, lenders, or developers that they need not fear incurring Federal environmental liability.

CONCLUSION

Through Administrative Reform, Superfund is now a fundamentally different program than it was just four years ago. By considering the differing perspectives of the various stakeholders in the Superfund process during the development of the reforms, EPA has succeeded in: promoting cost-effective cleanup choices that protect

human health and the environment over the long-term; reducing litigation so more time can be spent on cleanups and less on lawyers; and helping communities become more informed and involved so that cleanup decisions make the most sense at the community level. These reforms ensure that Superfund cleanups are faster, fairer, and more efficient.

Mr. MCINTOSH. Thank you very much, Mr. Laws. I appreciate that.

Let me now yield my questioning time to our vice chairman, Mr. Sununu.

Mr. SUNUNU. Thank you, Mr. Chairman.

I would like to just take a few moments to talk, not necessarily about the methodology—and I understand your concerns, Mr. Laws, with regard to your policy—but to try to talk a little more specifically about where we are and what the public can expect in the pace of cleanup and the effort and the commitment that's going on, and hopefully find a way to improve the situation.

I will come back to that point. That's where we need to go from here, and I'm very reluctant, despite the commitment and the effort, not just at the Federal level, but at the State level, as well, to deal with this problem. I don't believe that we ought to suggest that all is well, that we're streaming along, that everything is working efficiently or as efficiently as it can, because that detracts us from the most important aspect of these hearings and of our goal, which should be to improve the current process.

Mr. Laws, you spoke about 410 sites that have been completed, have been cleaned up. My question for you first is, 410 sites cleaned up, how many of those sites have been delisted?

Mr. LAWS. A very small portion; 120, approximately, have been.

Mr. SUNUNU. So less than half of those have been delisted. So despite the fact that we use terms like "cleaned up," the fact is that they remain hazards, that there is still an issue out there even for the vast majority of those sites.

Mr. LAWS. I wouldn't characterize that they remain hazardous. What construction complete indicates is that all of the construction necessary to clean up a site has occurred. There are a lot of operation and maintenance responsibilities that go on.

Mr. SUNUNU. So they are contained.

Mr. LAWS. It's more than contained. There are things that will go on. You have to realize that in a lot of these sites it took, literally, hundreds of years to create the contamination. You can't make it go away in 4 or 5 years; that's just impossible.

No one is suggesting that all is well in the Superfund program. This administration is probably the first one to admit that there were major problems in the administration and the law of Superfund, and we've taken tremendous strides in correcting that. What we are saying is that we think the program is improving; that is, it's different from the program that was in existence 5, 10, or 15 years ago.

We are in no way saying that it is fixed. We are still supportive of comprehensive Superfund reform legislation, but what we are saying is that the debate on how to fix Superfund must take into account how this program is operated today, and not go back and listen to war stories about how the program was run 10 and 12 years ago.

Mr. SUNUNU. I would certainly agree, generally, with those remarks. Again, I appreciate the efforts that are being undertaken every day by people at sites. As I mentioned, people are undertaking those efforts at a large number of sites, in my district, in particular.

So when we throw the 410 number, that refers to areas where the construction is complete, and obviously there is still activity going on. Let's try and get a handle on how long that construction phase takes place. Another number that I have heard discussed is that, over the past 4 years, 250 sites have been cleaned up. Now, again, I guess that means at 250 sites we have completed construction; they haven't been delisted.

Mr. LAWS. That's correct, sir.

Mr. SUNUNU. But of those 250 sites that have been cleaned up in the past 4 years, how many of those were listed and cleaned up in the past 4 years? In other words, on how many of those sites has the cleanup activity actually taken or construction activity actually taken 4 years or less?

Mr. LAWS. Of the sites that have been cleaned up in the last 4 years, are you asking when were they listed?

Mr. SUNUNU. No, I'm saying, we hear the phrase "250 sites with completed construction." So 250 sites with completed construction, but how many of those has the construction period actually taken 4 years or less?

Mr. LAWS. There have been some. I mean, we would have to break out the entire list. We can provide that to the subcommittee.

Mr. SUNUNU. Do you have any feel? Because I don't want to just use one statistic to characterize all 250 sites. If we don't have an answer to that question, what is the average time to clean up those 250 sites? We see an average construction time of 12.5 years; that's the current average, but I'm trying to get a better feel for the 250.

Mr. LAWS. We believe the current average is closer to 8 to 10 years.

Mr. SUNUNU. So for the 250 where we have completed construction, we're still talking about 8 years, 10 years, or perhaps even more, on average, to clean up a site.

Mr. LAWS. We think it's 8 to 10. We think it's going down. And we think that once we get continued benefits of the administrative reforms that it will go down even further by the year 2000. Clearly, Congress can help us. If we get a Superfund reform law, we could probably shave some more time off.

Mr. SUNUNU. I'm looking forward to doing everything I can to help you decrease that amount of time. But to be clear, you think that the average time to clean up a site is going down?

Mr. LAWS. Yes.

Mr. SUNUNU. Has the agency been able to present statistical evidence that would indicate that the average time to complete construction at a site is going down?

Mr. LAWS. We do have our analysis to support our position, and we can provide that to the subcommittee.

Mr. SUNUNU. I would be interested in any statistical evidence that you might be able to present. Let me try and look at one other way to determine whether or not the amount of time for construction is going up or going down, and that is to look at the rate that we're completing sites. We all know the NPL is actually increasing, and that's a fact of the large number of sites that are out there.

So we have a list of sites whose total number is increasing. We have, obviously, a large degree of resources being committed, and rightly so, to the effort. At what rate? How many sites per year

have we been able to complete construction on over the past—again, just talking in 4- or 5-year terms—in the past 4 or 5 years, how many sites are we, on average, completing construction on per year?

Mr. LAWS. We're averaging now 64 to 65. I would point out that in the President's budget he has asked for a substantial increase for the Superfund program to address that very problem, that we do have a backlog of sites that are ready to go, that can be cleaned up in a short timeframe. We are anticipating that, by the year 2000, we will be able to clean up, under current budget levels, an additional 250 sites. The President is proposing to double that to 500 sites, and his budget reflects the amounts of money that will be necessary to accomplish that.

Mr. SUNUNU. I understand that, and I appreciate that commitment. I will also point out that I am pleased that it shows a funding commitment similar to that that was proposed in legislation in the last session of Congress, as well.

You are averaging 60 or 65 sites per year, construction completed, now; 3 or 4 years ago, what was the average; how many sites were you completing per year?

Mr. LAWS. That has been the range for about the last 4 or 5 years.

Mr. SUNUNU. So the rate hasn't changed, unfortunately. The number of sites we're completing construction on per year really isn't increasing at all.

Mr. LAWS. No, but there are a lot of factors that go into that. That could be and most likely is a reflection of what our budget levels have been. I mean, that's the reason that a lot of these reforms have been implemented. The reason we have gone to a national prioritization system is that we have got a lot more sites that are ready, that could be cleaned up, than we have dollars to fund them.

Mr. SUNUNU. And I appreciate that.

Mr. LAWS. So what we're seeing with the dollars is just a reflection of the steady state of the Superfund budget over the last few years.

Mr. SUNUNU. So with the current funding levels, improvements in technology, improvements in effort, improvements of efficiency that may have taken place over the past 3, 5, 6 years hasn't improved your ability to clean up a greater number of sites.

Mr. LAWS. I would not agree with that, Congressman. I mean, what I'm saying is that the numbers that have come in, because of our funding capabilities, have gone down. The numbers of sites that are ready, that could be cleaned up in a shorter amount of time, increased significantly. We had sites at the end of last year that we couldn't fund, that were ready to go to construction, that we couldn't fund. That number went up the last fiscal year, and it's going to go up this fiscal year, as well, and that is part of the reflection of the President's budget request for fiscal 1998.

What we have done is gotten more sites to the point where we can make a big influx of dollars to clean them up, but we don't have the dollars to do that, so they are going to sit there until we get those dollars.

Mr. SUNUNU. To clarify, my point is that, for a given amount of money, I believe we should be able to find ways to employ new technology to improve the practices we have, to increase the number of sites that we are completing construction on, for a given year, for a given amount of funding.

Mr. LAWS. I agree with you wholeheartedly.

Mr. SUNUNU. I think that the overall funding levels have been relatively consistent, but we have not been able, unfortunately, to see an improvement in the number of sites that we completed.

One last question—and then I will certainly yield to anyone else that would like to ask some questions—and that is, you talked about trends or a trend of reduced time to complete construction, which I think interests us all, and statistics or data that you might have to show this positive trend. How many sites are included in the sample that is used to identify that overall trend?

Mr. LAWS. That is by looking at all of the sites on our construction complete list, the 410.

Mr. SUNUNU. So you look at all 410 sites, and you are saying, by analyzing that data, you show, on a year-by-year basis, we're reducing the total time for construction?

Mr. LAWS. To complete the construction; that's correct, sir.

Mr. SUNUNU. And that's information that you would be comfortable sharing with the committee?

Mr. LAWS. Oh, of course.

Mr. SUNUNU. Thank you very much.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Just let me follow up very quickly on that. Mr. Shuster, last August, had written complaining that data supporting the assertion that there was a 25 percent accelerated pace of cleanups hadn't been received. Has he been provided that data?

Mr. LAWS. Not all of it.

Mr. MCINTOSH. No. Is that the same data that you are referring to here?

Mr. LAWS. Yes.

Mr. MCINTOSH. When will they be able to make that available?

Mr. LAWS. Within the next 2 weeks.

Mr. MCINTOSH. Within the next 2 weeks. OK. Thank you very much.

Let me now recognize Mr. Sanders for 10 minutes.

Mr. SANDERS. Thank you very much, Mr. Chairman. I'm going to yield to Mr. Waxman in a moment. I would just like to begin by making two points. I think we can all agree that coming with an objective and fair assessment of how well an agency is dealing with this very, very complicated problem isn't easy.

Several examples: We talk about the number of Superfund resolved and cleaned up. I trust that there is no disagreement amongst you or the members of this committee that you could have one site which is in terrible shape, which requires a whole lot of money, and you could have the agency do an excellent job on a project which takes many, many years. And then you could have 10 other sites which do not have serious problems, and the agency could do a bad job and yet clean them up in a short period of time.

You lump them all together, and we say, "Well, gee, they didn't do a good job here," or "They did do a good job there," and you end up with a conclusion that means absolutely nothing.

Mr. Laws, is that a fair assessment of the situation?

Mr. LAWS. I think that would be.

Mr. SANDERS. So you throw all these things in the hopper; they end up suggesting perhaps nothing.

Second of all, what I would suggest—and we will get into this at some length later—we have some very, very serious problems with the methodology that the GAO used, and we will talk about that later. But I would hope, Mr. Chairman and members of the committee, that we could all recognize this is, in fact, a very, very complicated problem.

I would now yield to the ranking member of the entire committee, Mr. Waxman.

Mr. WAXMAN. We've changed the rules on the way committees operate, and we can do a half hour on each side, but rather than do that, the Chair seems to be indulgent of Members to go a little bit longer than ordinarily is the case, just to complete our questioning. I thank him very much for that courtesy to us.

I want to talk about this methodology for this GAO report, because it's important, when we use numbers in public policy, we make sure we're using the right numbers. In my work with environmental issues, I've learned to take nothing at face value.

As I understand, Mr. Guerrero, how GAO did its evaluation, it took EPA's data to determine the date each site is discovered, listed, and determined to be cleaned up. Then you looked at the sites that are listed in a given year and calculated the average numbers of years between the discovery and the listing. And then you calculate the average cleanup time the same way; that is to say, you look at all of the sites determined to be cleaned up in a given year, and then calculate the average years since the listing.

So you go backward. You take what happened in a given year, and you go backward to when it was first listed. I have worked with GAO in the past, for many years. I asked GAO to do an evaluation for me on drug issues. I want to have a chart about that, because I'm going to show you what GAO said about this kind of an evaluation.

But the reason I'm concerned about how unfair the methodology is, we know that during the Reagan years the administration was hostile to Superfund, so hostile, in fact, that the person in charge of it went to jail for failing to enforce the law. Few sites were cleaned up in the beginning. Most sites were deferred.

Under your methodology, because you ignore the sites that aren't cleaned up, the Reagan administration looks very good. Its average cleanup time for those very few sites that it cleaned up is short. Wouldn't that be the case?

Mr. GUERRERO. I'm sorry, I didn't follow the question.

Mr. WAXMAN. If you looked at the Reagan years, you would have to say they had a pretty good record, because they didn't take on a lot of sites, but what they took on they cleaned up real quickly.

Mr. GUERRERO. Well, for that reason, Mr. Waxman, we did not include that data in our analysis.

Mr. WAXMAN. But for your methodological approach, if you looked at it, the way you analyzed this issue, you would have to say they had done a pretty good job. On the other hand, the current administration's record looks poor. The current administration is cleaning up this huge backlog of cases. These are sites left over from the early 1980's.

It is certainly good public policy to clean up this backlog, but under your approach, the Clinton administration, to evaluate them, they get penalized. It looks like their average cleanup time goes up because you include in that average cleanup time the huge backlog of sites left over from the prior administration. So a methodological approach that makes an administration that is doing a good job look bad, while making a bad administration look good, seems flawed to me.

Now, I have this quote here. This is a quote from GAO, and this quote says that—when you measure the time it takes to get FDA approvals for drugs—GAO said, "Whenever the possibility of a backlog exists, basing time on year of approval is a less appropriate way to measure current practice because it incorporates older applications. In contrast, time based on year of submission eliminates the confounding effects of the backlog and, therefore, is the preferable measure."

Now, it's my understanding that there is a considerable backlog in cleaning up the Superfund sites, and that was your testimony, as well. Does your measure follow the guidelines given in the GAO report that I have cited?

Mr. GUERRERO. We certainly took that into consideration when we developed our measures.

Mr. WAXMAN. But you didn't use their evaluation method; you rejected it.

Mr. GUERRERO. We used a different evaluation technique because we were attempting to show a different thing.

Mr. WAXMAN. Well, the measure you use in your report, I think, is less appropriate as a way to measure the current practice. I find it troubling that you are putting on measures that your own organization would find misleading, because GAO says whenever you go look at a situation where there is a backlog, if you measure the time for approval without looking at the time it took to deal with the whole backlog, you are clearly going to get a longer period of time. It's going to make it look worse.

Mr. GUERRERO. We don't dispute the fact that a backlog can influence that, but we did not set out to look at current practice and current timeframes. We looked at how could you describe the productivity of this program over time.

Mr. WAXMAN. OK. Well, let me walk through your methodology with you, and I want another chart to go up. I'm going to give you a hypothetical situation. Let's say there's no policy change, only a few sites, and cleanup progresses at a steady pace.

Suppose there's an agreement to list 10 sites in the first year and to clean up those 10 sites at a rate of 1 every 2 years over the next 20 years. The next year we list another 10 with the same agreement; we clean up 1 of those sites every 2 years for the next 20 years. The third year we list another 10 sites with the same agree-

ment. In other words, nothing changes from year to year; 10 sites are listed, and those 10 sites are cleaned up over a 20-year period.

Now, let's look at the chart to the left. This chart shows the data in the way your organization said was the preferable measure, at least when we asked them to look at the backlog of drug approvals. The 10 sites listed in year 1 took, on average, 11 years to clean it up. The 10 sites listed in year 2 took, on average, 11 years to clean up, and so on. In other words, a straight line on that chart shows there is no change in policy and, therefore, the average cleanup time does not change from year to year.

Wouldn't you say, as you would evaluate that progress, that it's proceeding at a steady pace?

Mr. GUERRERO. Well, I can't speak to this specific example.

Mr. WAXMAN. Well, why can't you speak to it? I've given you a hypothetical. I've given you the facts, and we need to show how it works out on a chart if you follow the exact same pattern year after year. Wouldn't that show that there is a steady pace of proceeding to clean up?

Mr. GUERRERO. The difference between the listing by a completion cohort, which is what we did, and the listing here, the example you give, by a listing cohort, is exactly the issue that EPA raised with us in their comments to our draft report back in November. When we looked at their numbers, we had particular problems with using a listing cohort to assess the progress of the Superfund program.

The particular problem was that it will always, at this stage, show far more favorable results than the decision cohort. And the reason for that is, it's based simply on the observations which are incomplete at any given time and does not take into account the backlog.

Mr. WAXMAN. I'm talking about the problems in your methodology, and the problem in your methodology—which GAO already indicated there are problems in that kind of a methodology, under other circumstances—is that you, in effect, show a distorted picture because of that impact of the backlog.

I use that example which shows a steady way that they are handling it, that 10 sites were listed, in the 5th year get cleaned up at the same rate as the 10 sites listed in the 4th year, and the same rate as the 10 sites listed in the 3d year, and so on. There is no change across the time.

I would like you to put the next chart up. This shows the kind of bias. Using your methodology, you can see that it looks like it is going to take a longer period of time because you are calculating from the date going backward. It shows cleanup times increasing, when, in fact, cleanups are happening more quickly.

Mr. KARPMAN. Excuse me, Mr. Waxman.

Mr. WAXMAN. Yes.

Mr. KARPMAN. I'm not sure I follow you yet on the middle chart. Are you saying that all of the sites are completed in 1983, and you have the full measures of them?

Mr. WAXMAN. No, I'm saying that there are 10 sites listed in year 1, and it took, on average, 11 years to clean it up. And the 10 sites listed in year 2, 11 years to clean that up. And each year it's the same.

But if you look backward, then you are looking back at the time of completion from the very, very beginning, and that seems to me the fallacy in your methodology. It's always got to be skewed. I mean, here you have an administration that's trying to deal with a backlog. If you didn't have a backlog, then it wouldn't so distort what is going on, using your methodology.

Mr. KARPMAN. May I make a comment?

Mr. WAXMAN. Sure.

Mr. KARPMAN. Thank you. Regarding, first, the quote, I have a report, PEMD–96–2, which is from the same division, in which it says, "The two methods provide different information and are useful for different purposes. Using the date of decision cohort," which is the approach GAO took, "is useful when examining productivity and the management of resources. This method takes into consideration the actual number of applications from your request reviewed in a given year, including all backlogs from previous years. Alternatively, using the date-of-submission cohort is useful when examining the impact of a change in FDA review policy, which quite often only affects those applications submitted after its implementation."

The operative word there is "current practices." That's as if what we were trying to do is measure some programmatic change, and we certainly did not in this objective study.

Mr. WAXMAN. Excuse me. The heading of your testimony is, "Cleaning up sites is taking longer." The reason we are holding this hearing today—it's not even on a final report—is so that the message could get out that cleaning up sites is taking longer. That would make people think that Superfund is a failure. But, in fact, you aid that conclusion which you cannot reach by the methodology that's flawed.

Mr. KARPMAN. Sir, when you measure forward in time, you are only taking into account those sites forward. If I can give an example, think of a weight loss clinic. You have 100 people enter a weight loss clinic. You want to see what happens to them. I would submit that that weight loss clinic will then say, "Well, 30 people finished, and they lost an average of 10 pounds. Case closed." But I think what we were tasked to do is follow those 100 people and see, over a period of time, what happened to them.

Mr. WAXMAN. But your example has no backlog, does it? What we are dealing with is a situation where we are penalizing the progress based on going and dealing with the backlog.

Mr. KARPMAN. You say my example has a backlog—it does not have a backlog.

Mr. WAXMAN. Yes. You are giving me an example, and I'm trying to figure out the relevance of it.

Mr. KARPMAN. Well, the problem with the prospective study, the example you are showing, you are only using a portion of the cases to compute something in a given year.

Mr. WAXMAN. Yes, but in my hypothetical example I'm telling you in the future how everything happens, the same amount of progress in cleaning up each site listed, and how, if you follow that kind of hypothetical example, which we would all say was steady progress, using your methodology it would look like it's a slowed-down, delayed progress.

Mr. KARPMAN. I would concede a straight line, but I think what you need to concede is that, in a given year, you don't have all the information.

Mr. WAXMAN. No, but in my hypothetical example you do. And given my hypothetical example where you do have the information, using your methodology we end up with a chart like the one at the far left, which says the average time to clean up would mean it's taking longer.

That's the point I'm trying to make. By using your methodology—which GAO told us they wouldn't use because it's not appropriate, in other circumstances—you used here, I think your conclusion then becomes unhelpful, inappropriate, and not consistent with what we need to evaluate what reforms have taken place in the way Superfund cleanup is conducted, what changes we ought to make.

Do you have recommendations for us to help, or do you sort of say you don't know whether the reforms are working, which means we don't know whether we ought to do something to change the plan.

Mr. GUERRERO. One of the problems, Mr. Waxman, with this example and the Superfund data that we analyzed from EPA is that, while in this particular case you may have all the outcomes, in Superfund you don't. There is an awful lot still in process. To use a date of listing cohort, as opposed to a date of decision cohort, would effectively give you an understated average time to complete those cases, because the mean or the average will only rise over time, as additional cases out of the backlog are finished.

So, in other words, EPA's criticism of our report offered a methodology that was more seriously flawed.

Mr. WAXMAN. Well, I think that you can raise flaws with both methodologies. The problem with your methodology is, you reach a conclusion that cleaning up sites is taking longer, and I think that conclusion cannot be reached in a legitimate way, using the methodology that you have offered to us. Your methodology has to distort the progress that is made.

Mr. Chairman, you have been very indulgent in the time that is allotted to me. Perhaps, when other Members have completed, we can go back to this, but this is the complaint I have with the GAO report. It isn't a final report. You ought to think this over. You ought to talk to the other people at the GAO who rejected this kind of methodology because they thought it was inappropriate, because they thought it would distort the conclusions.

I think what we have is a report that is fairly useless for policymakers as a guide as to what actions we ought to take for the future.

Mr. CZERWINSKI. Mr. Waxman, may I?

Mr. WAXMAN. It's up to the Chair.

Mr. MCINTOSH. Go ahead and make your comment.

Mr. CZERWINSKI. You raise some very interesting concerns about the methodology, and they are concerns that we have had. We did not rely solely on one methodology. We looked at not only the cohort analysis going backward but also forward, and found that it verified the results. We also tried to make adjustments for the backlog, found that it verified the results. We went into the dif-

ferent phases of the cleanup process, and, again, those were stretching out as time went.

So your points are very well taken and they are ones that very much concerned us, but they also did not change the bottom line of where we came out.

Mr. WAXMAN. The only comment I would make, and maybe we can get into it later, is, EPA used an analysis showing that their progress time was going down, by using a methodology of moving forward and based on the time of the listing. Even though you acknowledge in your testimony and your report the backlog and the complications that are there, you lead to a conclusion which is solely based on this methodology, which I think is flawed, that says that cleaning up the sites is taking longer.

Mr. GUERRERO. If I could just clarify one point there, that the title—and we were very careful with this exactly for that reason—to say that the statement is entitled, "The times to assess and clean up hazardous wastesites exceed program goals." We make no projection of timeframes in the future, and one of the approaches that we used, and it was not the sole approach we used, talks about times that it has taken in the past.

Mr. MCINTOSH. Let me move on to the next. Before I lead to Mr. Snowbarger, let me make two points on this that I think are important. One, Mr. Waxman's chart there and his preferred methodology—and I don't know whether that was meant to be a hypothetical example, Henry.

Mr. WAXMAN. That's a hypothetical example where everything is being done consistently, the same amount of time to clean it up. Using one methodology, you would say it's equal; using another methodology, the exact same situation, would show there's a gap because you are looking backward.

Mr. MCINTOSH. And my point is that 11 years in the hypothetical—and we could find out what the real data is, in and of itself, unacceptable. Whether it was back in the Reagan or Bush or Clinton administrations, we need to do better in terms of reducing that time, as an overall goal.

The second point—and I want to check to confirm this—but it's my understanding that your methodology that you used in the report is the same one that EPA uses in its end-of-year, fiscal year, trends analysis to justify its budgets when they come up here to Congress. Is that correct?

Mr. GUERRERO. That's correct. It's the same approach that EPA has used. It's also an approach that the CBO has relied on to estimate timeframes for cleanups, and they, in fact, came out with higher estimates than we did.

Mr. MCINTOSH. So since the inception of the program it has been used by the agency and CBO to measure progress and determination of what budgets would be necessary to continue the program.

Mr. GUERRERO. That's correct.

Mr. MCINTOSH. Mr. Laws, do you agree with that?

Mr. LAWS. I don't know.

Mr. MCINTOSH. OK. If you want to put anything in the record later on that, let me know.

Let me now yield the rest of this 10-minute segment to Mr. Snowbarger, if he has questions.

Mr. SNOWBARGER. Yes, thank you, Mr. Chairman.

My line of questioning is a little simpler. Simpler minds require simpler questions, so I hope you will bear with me and walk me through this, not having a great deal of background either in the Superfund or as my colleague, Mr. Sununu, with an engineering background.

This is for the GAO and whoever needs to respond. You have described the long time that it takes in evaluating sites and deciding whether to place them in the Superfund program, so let me try to see if I can understand the consequences of that slow pace. Now, how many sites could be added to the program in the future? What's your estimate of that?

Mr. GUERRERO. Our estimate of that is from approximately 1,400 to 2,300 sites.

Mr. SNOWBARGER. So there are a potential of 1,400 to 2,300. How many have we been adding, let's say per year, over the last few years?

Mr. GUERRERO. The average over the last 5 years has been 16 per year.

Mr. SNOWBARGER. OK. So it's clear that we've got a problem getting these sites into the program to begin with. It sounds like we have an awful lot of sites and very few of them getting on the list; is that correct?

Mr. GUERRERO. That's correct.

Mr. SNOWBARGER. What's the consequence of delaying in getting onto the list?

Mr. GUERRERO. The consequence, if they are not addressed under other authorities at the State level or by other Federal authorities, is that they will sit there, and the issues will remain unresolved regarding the issues of public health and safety.

Mr. SNOWBARGER. OK. Well, let's shift over. Can you talk to me about the pace of cleanup? We've got a delay at the front end. It sounds like we also have a delay now, once it's placed on the list, after it has been added to the Superfund. How long does it take to clean up?

Mr. GUERRERO. In 1996, it took an average of 10.6 years.

Mr. SNOWBARGER. From your study, why does it take so long? I guess that's the bottom line question.

Mr. GUERRERO. There are numerous reasons given for why it takes that long. EPA tells us that it has to do with a number of factors: complexity of sites, available resources, negotiations with responsible parties over who is liable for contamination. All of those are possible explanations. I have to say that we did not look into, specifically, whether any of those had greater validity than others.

What we did observe is, there is a shift of resources within the Superfund budget, placing greater emphasis on the tail end of the process, that is, the cleanup itself. That has the effect of stretching out the front end or the study phase of the process. That study phase has been stretched out so long that it's driving up these averages.

So, in other words, to get something out of the pipeline and put a lot of effort into that, the price we're paying—we're robbing Peter

to pay Paul. We're adding to the front end of the process and stretching the whole process out.

Mr. SNOWBARGER. Let me follow up, then, with Mr. Laws, if I could.

EPA's 1996, end of the fiscal year budget indicated that 70 percent of EPA Superfund spending was going to cleanup, yet your budget shows only 47 percent of the trust fund actually goes to Superfund cleanups. I don't understand the difference between the 70 percent number and the 47 percent number.

Mr. LAWS. We don't subscribe to the 47 percent number, Congressman. We say that that amount of our budget goes to cleanup. It includes site assessment, our long-term actions, our early actions, our laboratory analysis, and what it costs to pay for our site managers.

Mr. SNOWBARGER. What you just listed is all within the 47 percent?

Mr. LAWS. It is within the 70 percent. That also includes some of our enforcement activities. We have a history of our enforcement program: for every $1 spent we bring in $7 from responsible parties. It also includes some of the work that is done by other Federal agencies, including the Justice Department, the Department of Health and Human Services, NOAA, and things of that nature.

Mr. SNOWBARGER. So when the agency is talking about how much of their budget is going into cleanup, we're including an awful lot of other activities other than those directly related to cleanup.

Mr. LAWS. No, everything is directly related to cleanup. I mean, you have to run a cleanup program, and those are the components that are necessary to run that cleanup program. If you take any one of them away, you won't be accomplishing the same level of cleanup.

Mr. SNOWBARGER. Well, are we, though, talking about virtually—well, the FTEs that are at your headquarters here in Washington, are they involved directly in cleanup, in your interpretation?

Mr. LAWS. They most certainly are, sir. Yes, they are.

Mr. SNOWBARGER. Well, is there anything the EPA does that's not involved in cleanup?

Mr. LAWS. There's our management and support of the program; our contracting, part of that is not included.

Mr. SNOWBARGER. And that's not included in the 70 percent that you're talking about?

Mr. LAWS. That's correct.

Mr. SNOWBARGER. Well, fewer sites have been added to the NPL over the last 5 years, and you've cut your site assessment budget during that time period. It seems to me we would have expected that money to be marked for cleanup, and yet the cleanup budget doesn't seem to be increased over that period of time. Where did the money go?

Mr. LAWS. The money that is not going into site assessment is going into cleanup. We are doing things differently this year. If I could take a step back, when you talk about getting sites listed, the atmosphere for getting sites placed on the NPL has changed dramatically. There are a number of factors that play into that. Probably the main one is the fact that when this program was started,

back in 1980, nobody knew how to do Superfund cleanup sites. It was entirely new. So the Federal Government assumed that responsibility.

Since then, the States have taken up a tremendous amount of the weight of doing that. What has happened, then, is that we have entered into partnerships with the States. So when we discover a site, it's not automatically determined that that site is going to be placed on the National Priorities List. States are given the opportunity to work to clean them up themselves.

We give opportunities to private parties to come in and clean sites, to work it out with the State. Whether that is going to happen or not, we don't know up front. We've had situations where the State thought they would be able to handle a site, where they did not. So you've got this time where the State was trying to work out the site, it didn't work, so then we have to restart the listing process.

We are doing a lot more early removals. The General Accounting Office actually did a report on us last year that was very positive about our removal program which gets to sites before we have to go through the lengthy listing process. So the funds that are coming out of site assessment are going to support these new activities.

If I could go a little farther, a lot of the things that have been leveled as criticisms are legitimate things that we should be looking at, but you are not getting the accurate picture of what's going on. We have an office that is dedicated solely to advancing innovative technology in hazardous waste cleanups, and it's a very successful office. It's the only one of its kind in the Environmental Protection Agency.

We support innovative cleanups. We have recently, in our New England division—at a New Hampshire site, I might add—entered into our first agreement where the Federal Government is going to share the risk of a failure of an innovative technology, something that the vendors of innovative technologies have been supporting for years.

So what we are doing at the agency is trying to address a lot of the problems that have been raised over the years, and we are making progress toward it. Like I said before, no one here is saying that we have fixed this problem, but I don't think that it's fair, in the debate that we're going to be entering into under Superfund, to be trying to portray this program in the light that it was 10 and 15 years ago, because that is not the way this program is operating today.

If you are basing decisions on a report that admittedly doesn't take into account the administrative reforms that we have put in place the last 3 or 4 years, I really question how that is going to aid in our debate.

Mr. SNOWBARGER. I'm kind of confused here about the budget. It's my understanding that these are EPA figures. For 1995, it shows 47 percent direct site cleanup; 1996, it shows 71 percent, and yet there has not been more money going to cleanup. I don't understand. Are we just renaming these things? We decide we need to show a better face on cleanup, so we add other functions in?

Mr. LAWS. I'm not sure what chart you are referring to.

Mr. SNOWBARGER. Well, the two pie charts there.

Mr. LAWS. Like I said, I don't know where those charts came from.

Mr. SNOWBARGER. I believe the figures came from your budget.

Mr. LAWS. I don't know that as a fact, sir. I mean, if you would like to see what our budget projections were for fiscal 1995 and fiscal 1996, we can certainly provide that. If, in fact, that is correct, we will provide an explanation.

Mr. SNOWBARGER. Yes, I would like to know. Again, if we're just reshuffling resources and calling them cleanup now, I think that's important for us to find out.

Thank you, Mr. Chairman.

Mr. SUNUNU [presiding]. Thank you very much, Mr. Snowbarger.

Mr. Kucinich.

Mr. SANDERS. Let me speak for a few minutes and then give it over to you, Dennis.

Mr. KUCINICH. Sure.

Mr. SANDERS. Let me just begin, Mr. Chairman, by expressing a concern that I think we have a problem, and I'm not sure that we are addressing it effectively today. My concern is that this is an enormously complicated issue.

I remember, when I was a mayor and I came into office, we had a guy who used to give us reports by telling us what a great job he was doing on everything. Fortunately, he never did anything, but he looked really good on paper. Then we had another guy who was knocking his brains out doing a good job, trying to do as much as he could, couldn't quite put it on paper, and it didn't look quite as good.

I mean, one of the basic problems that you have is if you have somebody who works for the administration and wants to look good to us, who is not an expert on every detail, they could deal with minor problems and say, "Look. We knocked this one off. We knocked that one off. We've got 83 projects we ended in 3 weeks. We're great."

Meanwhile, some of the major environmental crises facing this country are not dealt with. Children are getting sick, and somebody up here says, "Gee," you know. So it is a tough problem, and I don't know that we're getting to the root of it today.

Having said that, I happen to believe that we do need to take a very hard look at the Superfund. I happen to believe that there are problems there. I happen to believe that we could make it more cost-effective, could speed up the process. But I really would hope that we don't make it into a partisan issue and just the goal of it is to say, "Hey, these guys are doing a terrible job. Cut their funding," or something like that. If we do that, we've done a real disservice to the public.

I have some questions, but if Mr. Kucinich wanted to jump in now. Do you want to?

Mr. KUCINICH. Yes.

Mr. SANDERS. I will take it back after Dennis.

Mr. SUNUNU. Please, go right ahead.

Mr. KUCINICH. Thank you very much, Mr. Chairman and members of the committee. It's a pleasure to join all of you on this committee.

My questions dovetail some of the questions that Mr. Snowbarger raised relating to performance. I would like to direct the questions, with the Chair's permission, to Mr. Laws. And keep in mind that I am new here, so you may think these questions aren't relevant, but it appears to me they might be.

Mr. Laws, you have had this program cut, as has been testified by the GAO, and you have talked about the implications somewhat. I'm just wondering, should this Congress or the administration be cutting the EPA's budget when there is a backlog of sites and the program has been overwhelmed?

Mr. LAWS. No, I don't think so. I think that the President's budget for fiscal 1998 reflects the fact that we do have a commitment to the American people. Because of some of the delays that we have admitted to, there are communities out there that we have been promising to get their sites cleaned up, and I think it's now time that we follow through on that promise. That's what the President's budget reflects, an increase for dealing with Superfund sites and not a decrease.

Mr. KUCINICH. Is it your opinion, Mr. Laws, that the budget, as has been submitted, is going to be adequate to expedite the process of the cleanup?

Mr. LAWS. Yes, sir. The budget includes a proposed $650-million increase for Superfund. That is the first of a 2-year request in that amount, which will allow us, by the year 2000, to clean up an additional 250 sites.

Mr. KUCINICH. Do you have any recommendations other than the obvious funding one that would help the EPA expedite the cleanup and fix the problem of the delay?

Mr. LAWS. I assume that we will be engaging in a very healthy debate with the Congress in the months to come over Superfund reauthorization. We have had, over the last two Congresses, a very spirited back-and-forth on what is necessary.

We are committed to reforming this law in a way that makes these cleanups go faster, that makes them fairer to the parties involved, but at the same time ensures that the people who have to live near these sites are fully protected in their health and in their environment. So I think that is where the debate will center, as to exactly what is going to be necessary to ensure that we can accomplish all of those goals.

Mr. KUCINICH. Thank you, Mr. Laws.

Mr. Chairman and members of the committee, it seems to me that this committee might benefit, in terms of analyzing the performance here by the EPA, if we had the benefit of the manning tables, if you will, of personnel from the EPA, to see how reductions in the budget over the past couple years may have resulted in certain cutbacks that have affected directly the administrative functions of EPA that relate to these programs. Because anytime you cut money, you're cutting people. You cut people who do certain jobs, and the jobs aren't done, and then the responsibility shifts.

I would like to, with the permission of the Chair, just make that request, if we could get that information. So then, if the funding levels come back, we get some idea of how personnel might be

changed so that we would see a corresponding improvement in the function.

Is it possible we could get that?

Mr. SUNUNU. To the extent that the agency would like to submit that funding and personnel data, in addition to the other information that has been requested by the committee, I think it would be appropriate to include it for the record.

Mr. KUCINICH. Thank you, Mr. Chairman.

Mr. SUNUNU. Thank you very much, Mr. Kucinich.

The Chair recognizes Mr. Barr.

Mr. BARR. Thank you.

Mr. Laws, during the last questioning, maybe to assist you here, since you said you didn't know where the figures came from on those pie charts, they do come from EPA. They are directly from your agency, and we can provide those to you, if you would like, in a small version. Would that help?

Mr. LAWS. I'm sorry, Mr. Barr.

Mr. BARR. I'm questioning, Mr. Laws. I'm sorry. Let me repeat it then. You expressed in previous questioning that you didn't know where the information came from on the charts, to which I think the chairman of the subcommittee referred. Is that correct?

Mr. LAWS. Yes.

Mr. BARR. OK. Trying to help you out. The information came from EPA, and that is what the bottom of the charts say. Would it help you, in responding to questions to try and determine why we have gone all of a sudden from 47 percent to clean up to 71 percent, to have a smaller version of those charts which indicate also that they are EPA's figures? Or would that not help you in responding to questions?

Mr. LAWS. Well, I mean, what you are talking about is for the budget submission; what we are talking about is how the program operates. What the program does is, it looks at what are the dollars necessary for it to respond directly to sites, and that includes more than the actual dollars that are spent to clean up a site.

Mr. BARR. You're right. I mean, they can include whatever you want to include in them. That's a given. Whatever people want to include in them, they include in them. All I'm asking is, would it help you to have those charts, because you expressed that you didn't know where the information came from. It does come from EPA.

Mr. LAWS. OK.

Mr. BARR. Why don't you provide the witness those. That may help.

Just so I have clear in my mind what your previous testimony was, also, Mr. Laws, I think that this was in response to questioning by the subcommittee chairman, that you don't know what methodology EPA uses in its budget submissions to the Appropriations Committee.

Mr. LAWS. No, I think the question was that the methodology that EPA uses was identical to the methodology that GAO used, and I'm not in a position to say whether that is, in fact, correct.

Mr. BARR. OK. Do you know what methodology EPA does use in submitting and calculating its budget submission to the Appropriations Committee of the Congress?

Mr. LAWS. No, sir, I don't. We can provide that for you, but I can't tell you.

Mr. BARR. Well, I don't need you to provide it for me. I'm just asking if you know what methodology they use?

Mr. LAWS. No, sir.

Mr. BARR. OK. Also, Mr. Laws, I was intrigued by what I think is also your testimony that the Superfund program is now a fundamentally different program today. And I certainly recognize there is a time when we can make general statements, and general statements are appropriate, but I think we're at the point now where we need to be a little bit more specific.

On what basis can you make that statement, when EPA has stated, as recently as just a couple of months ago in a submission to the Congress, "Duration data would not be conclusive and results not complete for another 8 to 10 years." In other words, if the data isn't even near being completed, how can you make a fairly general but very specific statement that—or very clear statement—that the Superfund program is fundamentally different today?

Mr. LAWS. Well, very simply because a lot of the problems that have been identified with the program simply aren't occurring. Others aren't occurring as often as they were in the past.

The administrator likes to tell the story that when she first came into the agency, back in 1993, not a week went by that she didn't get a call from a Member of Congress or a Governor or a mayor, complaining about something happening at a Superfund site. And she said that doesn't occur anymore. We were always getting complaints from small parties who had been sued by larger parties.

Mr. BARR. What do you read into that? Do you read into that that the programs are working?

Mr. LAWS. I think what I read into that.

Mr. BARR. Hold on, please. I'm just asking you what you read into that. To me that doesn't mean anything, but maybe I'm missing something. What do you read into that, that Members of Congress are frustrated with the response, so they don't bother calling back, or that they are much more satisfied now, or that the programs have been concluded? I mean, what does that mean?

Mr. LAWS. I think what it means is that the issues that were being complained about we have taken very strong efforts in trying to address, and that they are, frankly, not occurring in the way that they were in the past.

Mr. BARR. Well, if that's the basis on which EPA reaches conclusions.

Mr. LAWS. Well.

Mr. BARR. Hold on.

Mr. LAWS. There are others.

Mr. BARR. Sir, please hold on. Hold on, please. OK. I'll give you time, and I'm giving you time, but don't interrupt me, please.

That is a very strange basis, it seems to me, on which to reach very broad conclusions to the American people and to the Congress about how EPA is faring and what problems have been resolved and what problems remain. The fact that, gee, Members of Congress don't call up and complain as much anymore, I mean, is there really not something a little more substantial that you can tell us

that has been used as the basis by EPA to make these general statements about how well the programs are doing?

Mr. LAWS. As I was going to say, Mr. Barr, a lot of the problems that have been identified in the program have been addressed. We were constantly criticized that small parties were never intended to be in the Superfund liability net, were being brought into the case by larger parties who were trying to expand the liability net. We have addressed that by providing zero-dollar settlements to tiny parties and settling out de minimis parties; over 14,000 have been done. That is a fact as to things that did not occur in the past that are occurring today.

We have been accused that we have not been carefully looking at high cost remedies and that there were cheaper ways to do that. So we established a remedy review board which is going to review every remedy that falls within a certain parameter of criteria. The Board first went into operation last year and has already resulted in between $15 million and $30 million in savings.

We have established a process where we're going to relook at old remedies to make sure that technology innovations and changes in technology and science that might have impacted our decision are relooked at. And if, in fact, a better decision is in place, it should be in place. In region one alone, we have had $56 million in savings because of changed remedies as a result of that initiative.

I can provide, and I will, Mr. Barr, a list of the specifics as to why we think this program has changed and how we are doing things differently. One of the major criticisms of this program is that we cleaned everything up to residential use.

Now, that is not how these sites are cleaned up, but what we have done is, we have made it a requirement that before we decide how a site is going to be cleaned up, we are going to determine what the reasonably anticipated future land use is. That is going to eliminate scenarios where sites which have been industrial for the last 100 years and will be industrial in perpetuity are even analyzed for a residential type cleanup.

So there are very concrete examples as to why we believe this program has changed.

Mr. BARR. OK. I would appreciate it if you would furnish that. If you would also, pursuant to—I think you indicated to the chairman that you would provide information on exactly what methodology EPA does use in its budget submission.

Mr. LAWS. Certainly.

[The information referred to follows:]

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COMMITTEES:
BANKING AND FINANCIAL SERVICES
GOVERNMENT REFORM AND OVERSIGHT
JUDICIARY

February 19, 1997

Mr. Elliot Laws
Assistant Administrator, Solid Waste & Emergency Response
Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

IN RE: SUPERFUND CLEAN-UP HEARING

Dear Mr. Laws:

I appreciate your appearance before the Subcommittee on National Economic Growth, National Resources and Regulatory Affairs at our hearing on the progress of Superfund clean-ups. As a follow-up to our discussion during my questioning period, I would request that you provide me with the following.

First, please explain the methodology used by the EPA in determining its budget figures for your budget that is submitted to the House Appropriations Committee. Include a breakdown of your budget and the percentage that actually goes to Superfund clean-ups.

Second, please provide me with any data that shows the cost to small communities around the country that lose business due to the problems initiated by hazardous Superfund sites that are not being cleaned up in a timely manner.

Please provide me with this material by the close of business on February 28th. Again, I appreciate your testifying and look forward to your responses.

With warm regards, I am,

very truly yours,

BOB BARR
Member of Congress

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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MAR - 7 1997

The Honorable Bob Barr
U.S. House of Representatives
Washington, D.C. 20515-1007

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Dear Congressman Barr:

Thank you for your letter dated February 19, 1997, regarding Superfund cleanups. We appreciated the opportunity to testify on Superfund cleanup before the House Subcommittee on National Economic Growth, National Resources and Regulatory Affairs, on February 13, 1997. Our response to your follow-up questions are provided below.

The Agency's request is designed to achieve the President's goal of 900 site completions by the end of calendar year 2000. The universe of sites considered part of this initiative is made up of those sites currently in remedial design and with construction underway. The additional resources requested for fiscal year 1998 are focused on direct site cleanup activities. The budget assumes continued realization of Superfund Administrative Reform efficiencies.

The Superfund budget breaks down into five major areas. Approximately 77.6% of the budget request supports actual site cleanup. Activities that are included in this amount are response actions (removal and remedial actions), site characterization (site assessment, lab analysis, and site studies), response contract management (START, RAC, and USACE) expenses, site tracking, and salaries for site managers and response program staff. About 8.5% of the budget request supports enforcement activities which ensure participation of responsible parties in Superfund cleanups and promote the agency's enforcement fairness reforms. Another 7.4% of the budget request is provided to our other Federal agency partners which provide vital support activities at Superfund sites, training for state and local responders, basic research, and other critical support functions. Approximately 6.4% of the budget request is for Agency level management and support activities which provide infrastructure, operations, and workforce support for the operation of the program. Finally, about 1.0% of the budget funds support activities provided by the Office of Air and Radiation at mixed waste and other complex sites.

While the Agency does not collect data on costs to communities from hazardous waste sites that are being remediated under the Superfund program, I share your concern that these sites be cleaned up as quickly as possible. The President's 1998 budget request for Superfund significantly accelerates our cleanup pace. Our goal is to clean up 900 sites through the year 2000, roughly two-thirds of the National Priorities List, the Nation's worst hazardous waste sites. Our 1998 budget request will help hundreds of communities as we clean up sites faster.

In addition, an important effort in the agency has been to address abandoned, idled or under-used industrial and commercial properties (so called brownfields) where expansion or redevelopment is complicated by real or perceived contamination. The U.S. General Accounting Office estimates that up to 450,000 brownfields sites exist, affecting virtually every community in the Nation. We are very proud of our efforts at Federal, state and local levels to link environmental protection with economic redevelopment with our Brownfields program.

Thank you again for your interest in the Superfund program and in our plans for fiscal year 1998.

Sincerely,

Timothy Fields, Jr.
Acting Assistant Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 12 1997

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform and Oversight
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to share the Agency's progress in improving the Superfund program with your Subcommittee on February 13, 1997. I hope our testimony proved informative to you and the rest of the Subcommittee.

While answering questions of the members, Elliott Laws, representing the Agency, agreed to provide additional information on Superfund cleanup project durations. We have enclosed our most recent analysis regarding this topic, as requested. If we can be of any further service, please do not hesitate to call on us. Thank you for your continued interest and support.

Sincerely,

Timothy Fields, Jr.
Acting Assistant Administrator

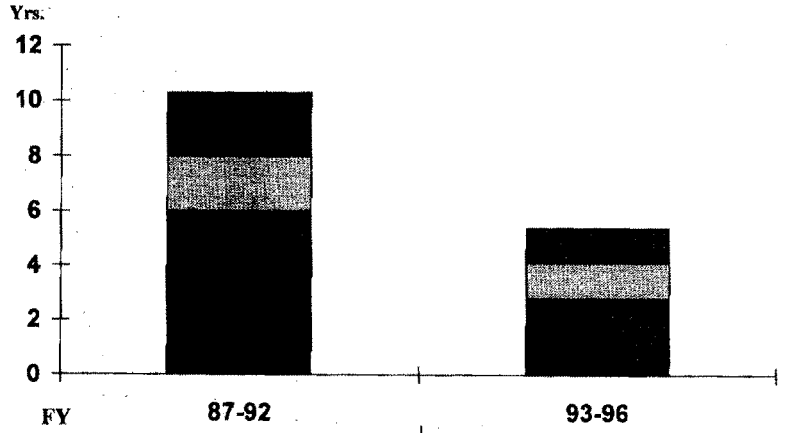
Enclosures

Shorter Remedial Clean-up Projects at Superfund Sites

Duration Overview:	The duration analysis was designed to break up the remedial pipeline by project, and to use a methodology that is better related to the estimated duration timeframes listed in the FY93 Superfund Program Implementation Manual.
Duration Methodology:	All remedial pipeline projects (Combined RI/FS, ROD, RD, RA) that contained a valid actual start date, and a valid actual completion date prior to and including FY96 (FY87-FY96) were included in this analysis. The durations for the pipeline projects were plotted, and averaged, in the Fiscal Year of the start of those projects. The observations represent the number of actual projects used in calculating the duration average.

Superfund

Shorter Remedial Clean-up Projects at Superfund Sites



	87-92 Projects	87-92 Average Duration	93-96 Projects	93-96 Average Duration
Remedial Action	445	2.3	193	1.3
Remedial Design	739	2.0	219	1.3
ROD to Remedial Design Start	701	0.7	219	0.6
Remedial Investigation/ Feasibility Study (RI/FS)	639	3.4	42	1.7
NPL Proposed to RI/FS Start	391	1.9	67	0.5

NOTE: This chart represents the average duration, plotted by start date, of pipeline projects completed by the end of FY96. Excludes Federal Facility Sites.

Mr. BARR. That would help us, since there seems to be some disputes about methodologies here.

Let me ask just one other question, Mr. Laws. I was looking at, again, some of these charts and graphs that have to do with the average time to complete Superfund cleanup projects. Is there any data that you all have that indicates, with some sort of tangible figures, how much it costs local communities in lost investment business coming into those communities during the course of whether it's 11 years or 20 years of a site being maintained on NPL?

In other words, you have small communities all over America, and once a site is on the NPL it has a disastrous effect on new business coming into that community. Do you all have any studies or information on—and that sort of is a cost of having a site listed on the NPL, and I think a very real one. Do you have any data on how much it does cost the communities or the local governments?

Mr. LAWS. I'm not sure if the agency has any data that might reflect that. We can check and see if any of the local government organizations have done some sort of studies. My guess is, however, that it's probably more anecdotal as to what communities believe the economic impact of a Superfund site has been, just as anecdotally there is evidence that some of them actually benefit because of the construction activity that comes into the community in getting the site ready for economic redevelopment.

I know there is not a study that we have done specifically on that, but there might be something that other organizations have done that we might be able to get.

Mr. BARR. OK. If you are aware of any or could locate any, with reasonable efforts, I would appreciate it. I think it's relevant and important.

There are some other questions I have, but I see that the time is just about up, so I will defer for right now. Thank you, Mr. Chairman.

Mr. SUNUNU. Thank you, Mr. Barr.

We will reserve time at the conclusion of Mr. Sanders' questioning, if you would like to add some additional comments.

Mr. Sanders.

Mr. SANDERS. Thank you very much, Mr. Chairman.

Mr. Chairman, if I may, as I understand it, Mr. Laws, today is your last day, and your co-workers are giving you a going away party.

Mr. GUERRERO. I thought this was his going away party. [Laughter.]

Mr. LAWS. I would assume they are having a little more fun right now than I am.

Mr. SANDERS. I would respectfully suggest, Mr. Chairman, if there are other questions that any Member might have of Mr. Laws, may we present them now, so that he can perhaps enjoy his last day in a little better way.

Mr. MCINTOSH. Mr. Barr, would you like to conclude?

Mr. BARR. Just one quick question, then, for Mr. Laws specifically.

I think, Mr. Laws—and I think this was in response to a question previously by Mr. Sununu—that EPA does not have any evidence that shows that the average cleanup time is going down.

Mr. LAWS. No, I didn't say that. I'm not sure that that evidence has been put in a report type form. The data that we have gone through does indicate that, and we will provide that to the subcommittee.

Mr. BARR. OK. That will be provided?

Mr. LAWS. Yes, sir.

Mr. BARR. OK. Thank you.

Thank you, Mr. Chairman.

Mr. SUNUNU. If I may just conclude the questioning by yielding myself a few moments, Mr. Laws. I understand that, in a letter that you put together for Congressmen Oxley and Boehlert in May of last year, you responded for the EPA with regard to the Superfund reform proposal by stating that there wasn't evidence that would support your claim—meaning that of Congressman Oxley—that the existing liability scheme delays the time for cleanup.

Contradicting that, however, was GAO testimony that stated, "EPA officials also said that the time to find the parties responsible for contaminating site and reach cleanup settlements can increase the cleanup times." These two statements, both by EPA parties or officials, obviously contradict one another.

My question to you would be, in the light of the GAO findings, how can you suggest that the time to track down tens and sometimes hundreds of potentially responsible parties wouldn't delay the cleanup time involved?

Mr. LAWS. Because the analysis, the site investigation, the study of what is going to be necessary to clean up that particular site proceeds while the enforcement side of the House is looking to try and identify who the responsible parties are.

I think, if you look at the time it takes, on another GAO report, for the private sector to clean up a site and the Federal Government to clean up a site, the difference is something like 6 months difference. So I don't think that the PRP search has a major impact on the length of time.

Mr. SUNUNU. Thank you very much. At this time, I would like to return the Chair to Mr. McIntosh, who has one or two final questions.

Mr. MCINTOSH [presiding]. Thank you, Mr. Sununu. Did you have any further questions before I finish up?

Mr. SUNUNU. Not at this time.

Mr. MCINTOSH. I wanted to check in with you—and I appreciate the panel's willingness to participate in all of this. I have a question for the General Accounting Office.

Mr. Sanders is pointing out that you are trying to leave for an engagement.

Mr. LAWS. Yes, sir.

Mr. MCINTOSH. I do have one more for the GAO, but I will put that on hold for a second and ask Mr. Laws a question.

In your testimony, you had indicated that EPA had established a "worst problems first" priority system. The National Risk-Based Priority Panel has evaluated and tried to rank cleanup actions ac-

cording to five different criteria: risks to humans and the environment; instability in characteristics of the contaminants; and economic, social and program management considerations.

Now, based on these criteria, the panel had ranked one of the Superfund sites, the Havertown PCP site, the eighth worst cleanup project in the Nation. The site was placed on the NPL list in 1982. According to the documentation supporting the agency's decision to cap the site, this site is indeed one of the ones that is very stable.

EPA has stated that the contaminants at this site, such as arsenic, dioxin, PCPs, and PAHs, all bind with the soil and are not volatile or highly mobile. The most highly contaminated area of the site is surrounded by a berm that prevents any further migration of soil.

The agency apparently has also stated that these soils onsite present minimal threats to the community and, if capped, would present no threat to the community or anyone using the cap. Previously, EPA actions have stabilized the site so that there's no significant threat to local residents.

Now, the relative priority of this response appears to have been established on a first-come, first-served basis rather than on risk. Does this site, in fact, present the type of risk that would make this the eighth worst cleanup project in the country, or was it listed that way because it was one that they were about to finish cleanup?

Mr. LAWS. No, actually the national risk priority system—to get to the second point first—is actually working kind of perverse effect on those sites that are ready to complete cleanup. I mean, the sites that have had most of the work done, that are ready for maybe a final operable unit to be done—where we have stabilized the risk, we have protected the communities—are constantly bumped to the bottom of the list by newer sites that are coming along where the sites have not been stabilized to that point. So actually the risk system works the other way.

My understanding with the Havertown site, though, is that the reason it ranked so high was because of ground water problems and not because of the soil problem.

Mr. MCINTOSH. That is what was confusing to me, because apparently the type of contaminants there all seem to be the type that do bind with the soil, so you would have less of a significant concern about the ground water problems than perhaps other sites where you've got water soluble contaminants.

Mr. LAWS. I'm not familiar with that particular site, but I do know that it was a ground water issue that was pushing the higher ranking of it.

Mr. MCINTOSH. Do you know if that ground water problem that they did detect presented a great amount of risk?

Mr. LAWS. I think it was threatening a drinking water source, is my belief. I would have to check on that, but I did have a couple of conversations with the Regional Administrator about that site, and that's my recollection.

Mr. MCINTOSH. OK. Mr. Laws, I do understand it's your last day, but perhaps the agency could give us some further answer.

Mr. LAWS. Actually, because it did refer also to the testimony of one of the earlier witnesses, we can provide the committee with an

analysis of what the problem was, our responsiveness summary, which would have addressed the issue raised by the vendor who had testified earlier, and we can provide all of that information about that.

Mr. MCINTOSH. Yes, that would be helpful, and some analysis about why it was placed at that risk level.

Mr. LAWS. Certainly.

Mr. MCINTOSH. Thank you very much, Mr. Laws. I appreciate your coming. I don't think there are any other questions for you. We wish you well in your next life.

Mr. LAWS. Thank you very much, Mr. Chairman.

Mr. MCINTOSH. One final question for GAO. I understand that you did not focus only on the trend lines for listing in construction completions, but also looked at sites that had gone through various stages of the listing process and the cleanup process. I wanted to check, what stages in each process did you observe that the average processing times had lengthened?

Mr. GUERRERO. Yes. The answer to your question is, yes, we did look at the stages. There were two areas that basically were driving the numbers. The first is, the period of time after all the initial assessments are done for listing was increasing. So the time between that point and the listing was increasing.

Then, on the cleanup side of the picture, it was the time spent selecting a remedy and studying what possible remedies to use was driving the process.

Mr. MCINTOSH. So, in each case, it was the latter stages that were doing it?

Mr. GUERRERO. In the first part, it was the very tail end; in the second part, it was the very front end of the process.

Mr. MCINTOSH. Are both of those stages the stages at which there are a large number of parties that are consulted and brought into the process?

Mr. DONAGHY. Yes, there is some enforcement in the end stage of the listing process, where an attempt is made to find parties responsible for the contamination. And then, early in the cleanup process, there are negotiations. After listing, there are negotiations carried on with the responsible parties to attempt to reach a settlement.

I think that the delay in getting the construction started at sites after they are listed is a result of a delay in starting the cleanup study, the process that leads to the selection of a cleanup remedy, and also a stretch-out in the time that it has taken to conduct that remedy selection.

Mr. MCINTOSH. Let me just close by saying thank you for GAO coming and the work on your draft report. I look forward to seeing the final report. I have a high degree of confidence on the methodologies that you have used in that report. I think they will serve us well in this Congress as we move forward in looking at reauthorizing Superfund.

Mr. GUERRERO. Thank you, Mr. Chairman.

Mr. MCINTOSH. Mr. Sanders, did you have a closing comment?

Mr. SANDERS. I'm not quite sure that we had the adequate time. I think more of the time was on your side. So I think we're entitled to at least 10 minutes.

Mr. MCINTOSH. OK. I was not here. Mr. Sanders has some questions. Excuse me.

Proceed.

Mr. SANDERS. Thank you very much. Mr. Chairman, despite the inauspicious beginning of this meeting, I certainly don't want to be terribly partisan, but I must raise an issue, and it's a quote from you, Mr. Chairman, which I want to bounce off the GAO.

We have a memorandum here from the chairman, Mr. McIntosh, dated February 6, 1997, that states, "GAO estimates that EPA will take, on average, at least 21 years to complete cleanups at non-Federal sites whose discovery was reported in 1995."

My question to Mr. Guerrero is, do you agree that it takes 21 years? Is it appropriate to use your analysis to project how long it will take EPA to list and clean up sites that are reported in 1995?

Mr. GUERRERO. As I stated earlier, Mr. Sanders, our analysis does not allow you to project forward what those timeframes will be.

Mr. SANDERS. I don't want to put you on the spot, but I read you a quote from the chairman, and what I'm hearing from you, it's not a totally appropriate quote. You can nod your head if you don't want to offend anybody, but I'm understanding you to say that.

Mr. GUERRERO. The numbers are based on what it did take, the average times that it took in 1996, and that number is the sum total of those two timeframes.

Mr. SANDERS. So what you are saying, in essence, is that it is not useful, that the quote of the chairman is not necessarily appropriate or accurate, and that it is not useful for examining the impacts of changes in EPA Superfund policies and procedures which could affect the program's future performance.

In other words, I guess the only point that I wanted to make is, the chairman had a quote, and I think it was probably not an appropriate quote, based on the information that you provided.

Mr. CZERWINSKI. In all fairness, Mr. Sanders, though, I think that's probably from our lack of specificity in dealing with the chairman. We have been refining our message as our work progressed, and, most likely, the misunderstanding was due to our poor communication.

Mr. SANDERS. OK. And maybe that's one of the problems with having a hearing with a work in progress. Possibly.

Mr. GUERRERO. I would like to clarify, though, GAO's policy is to testify on work that is in progress, provided that we have sufficiently completed that work that we can usefully contribute to the discussions.

Mr. SANDERS. Let me just continue and suggest that, as I understand it, your methodology doesn't even look at the average time for sites reported in a certain year. Instead, it looks at the average for sites completed in a certain year. Is that correct?

Mr. GUERRERO. That's correct. That's what Mr. Waxman was talking about earlier.

Mr. SANDERS. OK. My conclusion would be that, hopefully, perhaps the chairman did not fully understand the situation when he made his quote. The same memorandum refers to the title of your draft report, "It now takes more time to address and clean up hazardous wastesites," that's the title.

This title tells me that you analyzed how long it takes to list and clean up sites under the new reforms, and it is a clear indictment of the reforms. Yet you testified that your analysis should not be used to judge the reforms or to project the average cleanup times for sites discovered after the reforms were adopted.

Is this going to be the title of your final report?

Mr. GUERRERO. No, it will not.

Mr. SANDERS. So the title that you now have for your draft report, "It now takes more time to assess and clean up hazardous wastesites"—interesting title—is, in fact, not going to be the title for your final report; that's correct?

Mr. GUERRERO. That's correct.

Mr. SANDERS. I think that's important to state for the record. Can you tell us what your new title will be?

Mr. GUERRERO. We haven't selected it. However, what I would want to say is that the approach used shows that it has taken the amount of time we indicated in these charts, in each of those years. The choice of the title for our draft report, which was sent to the agency for comment, as is a typical practice of ours, led us to believe that that could be misunderstood, so we are going to change the title of the report.

Mr. SANDERS. We appreciate it. We happen to think that the whole methodology, as you know, is misleading, not only the title, so we appreciate your at least changing the title.

Mr. Chairman, as it was just established, in our opinion, in my view, the GAO's analysis should not be used to judge the current program or to project how long cleanups will take in the coming years. And it cannot show the impossible, that it took an average of 21 years to clean up sites, because Superfund hasn't even been around that long.

Therefore, I hope that the final report clearly explains the inherent bias in the methodology and clearly spells out the limitations of the data. I would not want the chairman, or any member of the committee, or any reader, to be misled on this subject again.

Mr. Chairman, I would like to explore the reasons for delay for a little while.

You testified that a major factor was, the Superfund program started with a backlog of sites awaiting evaluation. That's a quote. Correct? Now, let's say, hypothetically, there is a huge backlog of sites because previous administrations had neglected the program, and, again, hypothetically, a new administration aggressively and successfully attacks this backlog by finally finishing up those long, drawn out listings and cleanups.

Would the results of your analysis show that the cleanups completed by this new administration were actually taking longer than cleanups completed by previous neglectful administrations?

Mr. GUERRERO. The average, based on our analysis, would rise because it takes into account the backlog. However, that is not the only approach that we used in our analysis.

Mr. SANDERS. One more time, I think the point that we're trying to make is that the information provided does not necessarily reflect the reality of what is taking place and the efforts of the Clinton administration to improve upon the situation.

Mr. Chairman, let me just ask a few more questions, and thank you for your indulgence here.

I would ask GAO what recommendations they are making today for fixing the problems related to delay.

Mr. GUERRERO. We are not making any formal recommendations in our testimony, nor do we anticipate making recommendations in our final report. I would make several observations, however. And I would like to speak to the methodology, because I think it's important to note that the methodology does show some very, very important things.

Among those is the fact that the timeframes spent within specific parts of the Superfund cleanup process are changing. Certain parts are getting longer; other portions may be remaining the same. In effect, as I said earlier, this is a result of a number of decisions to emphasize the tail end of the process or the cleanups. It is robbing Peter to pay Paul and, in effect, will be shown in even higher average times in the future.

We feel very strongly, and we have made recommendations, that because of the size of the backlog in this program, which it began with, because of the large number of sites yet to be listed, and because of the large number of sites in the pipeline, it is imperative that we use a risk-based approach to manage this process and ensure that the worst sites are getting addressed first.

That's something we have recommended in the past and we are recommending today before Chairman Horn's subcommittee in our high risk reports. We feel even stronger about it based on the analysis we've done here. This is a program where results are important, and we have not been convinced in the past that the agency has used that type of approach.

Mr. SANDERS. My time has expired. I would just, with the chairman's indulgence, take a brief moment to ask you this: Would you recommend the reforms implemented by the EPA in the last few years?

Mr. GUERRERO. The reforms that the agency has put in place all have potential to achieve what the agency is setting out to do, which is reducing timeframes and reducing costs.

Mr. SANDERS. You see these in a positive light.

Mr. GUERRERO. We see them in a positive light. I think where the debate has been this morning is, how can you measure that, and how can you show those kinds of examples.

Mr. SANDERS. I appreciate that. Honest people can disagree. It's a complicated issue. But what I'm hearing you say is that the changes and the reforms implemented in recent years are positive. That is what you're saying; is that correct?

Mr. GUERRERO. They are headed in the right direction. Whether they are having the impact is the question we have been talking about.

Mr. CZERWINSKI. Mr. Sanders, I think the key word is "implemented." We are not sure how extensively they are being implemented, and we are undergoing studies at the request of this committee, the authorizing and appropriations committees to see the exact extent of EPA's implementation.

Mr. SANDERS. I do appreciate it. What you are saying—again, I don't want to put words in your mouth—but you are saying you

like the reforms; you see them moving in the right direction; you are concerned about the implementation.

Mr. CZERWINSKI. We see the concepts as being very positive; the results have yet to be proven.

Mr. SANDERS. OK. My last question, Mr. Chairman, is a very simple one for the members up there. In order to better implement those processes, would you recommend that Congress appropriate more funds?

Mr. GUERRERO. Again, I would say that, going back to the earlier discussions, you can always put more funds into this program, and you will probably get more output. The question is, are you getting the right kind of output? And whatever that funding level is, we would continue to strongly urge that the agency use a risk-based approach to ensure it is addressing the worst sites.

Mr. SANDERS. My time has expired. I thank you very much, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. Sanders.

Let me turn now to Representative Barr who has a couple questions for this panel.

Mr. BARR. Thank you, Mr. Chairman. Is it a fair assessment, Mr. Guerrero, of GAO's role, not just in your testimony here today but in general, that GAO uses commonly accepted, defensible, verifiable, legitimate means of computing data as objectively as possible, and then makes the results of that analysis available to Members of Congress and others in the executive branch, and that it's not your job to draw, necessarily, conclusions from it, with regard to how it can be used in determining policies?

Mr. GUERRERO. That's right. We will, on occasion make recommendations, when we believe the evidence is compelling. In this particular case, we are simply trying to present data that suggests a troubling picture.

Mr. BARR. Would it be fair to say that, from time to time, Members of Congress on both sides of the aisle and members of the executive branch disagree with what you have done, and may reach different conclusions based on the evidence?

Mr. GUERRERO. Absolutely.

Mr. BARR. Without beating a horse here, again, about methodologies, is it a fair statement, based on your objective analysis, as reflected in your testimony today, that the average completion time for projects has increased substantially over the last several years?

Mr. GUERRERO. Yes.

Mr. BARR. Is there any doubt in your mind about that?

Mr. GUERRERO. No.

Mr. BARR. Is that based on an objective analysis according to commonly accepted standards and methodologies of analysis?

Mr. GUERRERO. Yes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Barr.

Let me conclude this panel by summarizing some of the important things that have, indeed, come out. And I think as much as we may dislike the results, I don't think it's appropriate to be attacking the method when you don't like the results, when the facts are staring you right there in the face.

It is a fact that, in 1996, it has taken 20 years, on average, to clean up the sites that were finished there, and that your study showed that, in that year, that is the case for those sites. That's an appallingly long time and not acceptable for us.

It also appears that the reforms which began being implemented in 1992 and were fully implemented in 1994, and additional reforms in 1995 and 1996, don't seem to have slowed down the increase in time it takes to list a site onto the National Priority List. That number continues to climb every year since 1992 by roughly the same amount.

Finally, it appears to us that 53 percent of the money that is spent on this program is used for bureaucratic expenses, and 47 percent is used for real cleanup; and that, when we're being asked whether we should spend more money or not in the program, the first question should be asked, are we using the money that is already there appropriately to get the maximum amount of cleanups for the taxpayer money that is being spent. I think the answer to that is a very clear no.

I appreciate the effort that you have brought forth in bringing out these facts. I understand, when people disagree with facts or they don't agree with their agenda, that they may attack your methods. But I think you've got very sound methods behind this report, and I look forward to seeing the completed work product presented to our committee.

Thank you.

Our next panel is a colleague of ours who has done a lot of work in this area, has become somewhat of an expert, and I am very much pleased to now recognize the Representative from Florida, Mr. John Mica.

STATEMENT OF HON. JOHN L. MICA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MICA. Thank you, Mr. Chairman. I thank you for your leadership on this issue and for again tackling some of the environmental cleanup that is so important to our country, our children and our communities.

I am pleased to see Mr. Sanders has joined the panel as a ranking member. They have not only recognized his seniority but also his expertise. He also is someone with whom I've served, and I know his true compassion to see that the environment is protected and that those that, indeed, are the least fortunate in our society are not victimized by Government inaction, particularly in hazardous waste cleanup sites.

I come to you today having served on a similar panel back in my first term, served among leaders of the Congress like Mr. Synar, who is not with us, rest his soul, and Mr. Towns, and others. We looked at these issues. Mr. Chairman and members of the panel, I tell you, I've been there and I've heard before what EPA and GAO are telling us today.

It continues to concern me that we, in fact, are now—and this report confirms—taking a longer time to clean up sites; in fact, that the only ones that are "cleaning up" in some of this process are the attorneys and the people conducting studies—expensive studies—and that the sites are not being cleaned up.

Again, this confirms previous GAO findings, other subcommittee and committee findings of Congress. We all want to get to the same place, and that is cleaning up the sites that pose the most risk to our communities and to our children. Where have we come? I don't think we've come very far.

I am here to suggest today a couple of steps. One, I think we need to start turning more and more of this responsibility over to States. It's easy to criticize the Federal Government, and their record is obvious, but we should look at what the States are doing and their initiatives. I think, if you analyzed it and your subcommittee analyzed it, you will find some of the cleanup sites that EPA is taking credit for actually have been State and local initiatives that have resolved these situations.

Let me give two examples. In Pennsylvania where our colleague, Mr. Ridge, became Governor 2 short years ago, he has cleaned up 13 brownfields sites in just 1 year at a cost of $711,000. As you may recall, last fall EPA planned to host a brownfields conference in Pittsburgh at a cost that was, at that time, estimated to be $729,000. So they were going to spend the money for a conference. I think they revised that down to half a million, after hearing some congressional protests.

Here's an example of a State cleaning up brownfields sites at a cost of $711,000, as opposed to spending it on a get together to talk about it.

Minnesota is another good example. Minnesota has a voluntary investigations and compliance program. I heard a speaker say recently, in fact, just within the last week, that Minnesota has cleaned up more sites than the entire Federal Government Superfund program. This State permits innocent developers and others to clean up contaminated land in return for a legal shield against future liability. The ultimate goal is, in fact, cleaning up these sites and not, again, becoming involved in a legal morass.

In my own State of Florida, we had one site we looked at that had a project manager almost every other year. They had so many project managers that, in fact, the project managers left, became consultants to this process and were further studying the hazardous wastesites. So we see that the Federal approach hasn't worked. We see good examples of where the State approaches are working.

Now, there are a couple of other recommendations other than turning some of this over to the States and locals who can act a little bit more expeditiously. First of all, we've got to use cost-benefit and risk assessment. You heard the EPA talking about the use of risk assessment. What disturbs me is that we see the same problem. Remedy selection doesn't use risk assessment. It is important that we look for the most cost-effective solutions for cleanup.

And we heard this before. Another GAO report that was presented to us just months ago said that the sites that are cleaned up under these Federal programs are not the sites that pose the most risk to human health and safety, nor do they address the poor in the community. That problem still has not been addressed. So some risk assessment should be used in priority selection of the sites.

Then addressing, finally, the question of retroactive liability, EPA continues to let polluters not pay and then come back to us

and ask for more money from the taxpayers. The original intent was good: have polluters pay, have polluters clean up. This has been distorted. Over $4 billion, according to EPA Watch, has been lost because EPA did not pursue these folks and let the statute of limitations expire.

So we've got a problem that still exists. It requires our oversight and our staying on EPA to make this program work. And we need to look at other effective solutions that States are adopting to clean these sites up that pose the most risk to our communities and our children.

I thank you for the opportunity to be here. I was hoping that I would come before your subcommittee and all the sites would have been cleaned up by now, and we could have had a meeting of celebration, but that's not the case. Again, thank you all for your leadership on this issue.

Mr. MCINTOSH. Thank you, Mr. Mica. Hopefully, we can perhaps get some reforms and continue to further implement the reforms the agency has put into place, and achieve a record somewhat like Governor Ridge's, where you actually get the job done at relatively little expense.

I have no questions for Mr. Mica.

Mr. Sanders.

Mr. SANDERS. I would just say a few words. First of all, John, thank you very much for your kind remarks. As you know, there are disagreements about some of the conclusions that you've reached and the chairman has reached. It is not necessarily agreed by everybody that the process now has slowed down. There is difference of opinion about the methodology used by the GAO.

Second of all, I'm sure you will agree that while we all want flexibility, we want to learn from everybody involved in the process, and that we all agree some States have done an excellent job, you will not disagree that some States have done an atrocious and neglectful job. That is my assessment.

I think we can all share the common goal of getting these sites cleaned up as quickly as possible and as cost-effectively as possible. Thanks for your contribution.

Mr. MICA. Thank you. I look forward to working with you in that regard.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. Mica.

Mr. Sanders, I propose we take a 10-minute recess to go vote and come back.

The committee will stand in recess.

[Recess.]

Mr. MCINTOSH. The subcommittee will reconvene and come to order.

Let's proceed now to our final panelists of the day. I appreciate both Mr. Wholey and Ms. Klemm for coming forward and talking. Now, I understand that GAO and administration witnesses are not covered by House Rule XI, obviously, but Ms. Klemm would be. And it is my understanding that you do, in fact, receive some Federal funds, and I am also told that you will provide the subcommittee with a written record of all Federal grants, subgrants, contracts, and subcontracts that you receive.

Why don't we first proceed to swearing everybody in, and then I've just got a couple questions for you along those lines. If both witnesses would please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show that both witnesses answered in the affirmative.

Ms. Klemm, just to make sure we understand the facts correctly, so that the record will be clear, do you receive some Federal grants?

Ms. KLEMM. Yes.

Mr. MCINTOSH. Could you summarize those grants by the amount and type they are?

Ms. KLEMM. I called my office to get some information so that I can at least have some response. First, let me say that none of the money that I, as the owner of Klemm Analysis Group, or the organization, have received has ever come from EPA.

The largest contracts we have with the Federal Government, and this is over the past 10 years, are with the Centers for Disease Control and Prevention. We have a task order contract that is in its 5th year, and the total of that, to date, has been slightly over $7 million. It was signed in 1992.

We also, last year, received one of the Presidential Advisory Panel awards for Gulf war illnesses, which is through Fort Detrick, Department of Defense. That is for $778,000 and is a multiyear contract awarded last June.

We have been working for the Substance Abuse and Mental Health Services Administration since September 1991. The amount of that contract at the time of award, and it has remained at the same amount, is about $1.5 million. It is still ongoing.

We have a project with the Department of Veterans Affairs to study women who served in the Vietnam era. The second phase of that study is ongoing now and is for $1.3 million.

Mr. MCINTOSH. Ms. Klemm, if you would like to just go ahead, we can put all of that into the record.

Ms. KLEMM. OK. Fine. I thought you wanted me actually to go through those.

Mr. MCINTOSH. I did ask that, and you were very kind to proceed. But in order to get to your testimony, we can do that, and we do look forward to seeing the full list.

Ms. KLEMM. OK.

Mr. MCINTOSH. Let me emphasize, just for the record, that our effort here is not to create a trap for people in any way but really just to comply with the spirit of this new rule in the House. So I think your best efforts, in terms of disclosure, which you have done admirably, is great, and I thank you for that. We can submit the rest of the list and update it further later on.

Ms. KLEMM. OK. Great. That's fine.

Mr. MCINTOSH. Thank you.

Let's turn now to Ms. Klemm, if you could give us your testimony.

STATEMENTS OF REBECCA J. KLEMM, PH.D., KLEMM ANALYSIS GROUP; AND JAMES WHOLEY, SENIOR ADVISOR FOR EVALUATION METHODOLOGY, GENERAL ACCOUNTING OFFICE

Ms. KLEMM. Mr. Chairman, I have a written statement which I ask that you include in the record of this hearing, and I will briefly summarize my views and then answer any questions you might have.

Mr. MCINTOSH. We will include the full statement.

Ms. KLEMM. OK. My name is Rebecca Klemm. I am the president of Klemm Analysis Group here in Washington, DC. It is a statistical research and analysis company that has done a large number of studies assessing statistical work and performing analysis for both Government and commercial clients.

I have served as a court-appointed expert witness on statistical evidence and am currently a member of the National Conference of Lawyers and Scientists of the Association for the Advancement of Science and the American Bar Association Science and Technology Section. I earned my Ph.D. in statistics from the Iowa State University and have served on the faculty of Georgetown University and Temple University, where I taught statistics. I am also past president of the Society of Risk Analysis, the Washington, DC, chapter.

I am not an expert on the Superfund and, in fact, have never done any work for the EPA. I am here today because Congressman Waxman asked me to look at the methods used by GAO in the work they are reporting and did report in their testimony today. I have only seen their testimony and I heard it today, and have not had the opportunity to review the data in detail that they used. However, reading their testimony and hearing today, I believe that I can make some suggestions that would be helpful to their analysis and the work of this subcommittee.

The GAO's work reports their estimates of the time that it takes to list a hazardous site after it is discovered and to clean it up after it is listed. The issue is whether the procedure they used to make their estimates is the most useful one.

One issue is that GAO only looks at the sites that were listed. If a site was discovered but not listed, it does not come into their calculations of the average time. We do not really know the effect of this on the results. It could be that sites which are not listed are quickly decided, or it could be that because they are less of a problem, EPA takes longer to get to them. But they are not included.

Another issue is that GAO calculates time by averaging the time it took for cases closed in a particular year, and we have heard a lot of discussion about this. They look at the year that it is closed and how long it took to get to this, looking backward.

Because the law was passed in 1980, there were fewer years available in the earlier period. So, in 1982, there were only 2 years since the law was passed. It is a bit uncertain as to what the discovery dates for the early cases were. In other words, the further out you get from 1980, the more years appear to be available for being included in the average.

If we calculate the number the other way, that is to say, examining cases discovered in a particular year, going forward, the prob-

lem is presented in mirror image. There are fewer years available for averaging in the later time period. So it is not at all surprising that these two methods get different results, and we have heard about results from both kinds of methods today.

Another issue is how GAO treats severity or complexity of a site. It could be that time to completion is influenced by how serious the hazard is, but there is no analysis of this presented. During panel one, there was discussion about the various locations of sites, and that they tend to be more complex because of the various locations or operational groups, and that they do tend to take more time. I think that should be included in the analysis.

It is important for this work to specify how we are going to use these results; specifically, what we are going to compare the result to. In fact, the Superfund determinations involve many decisions and reviews. To get a good idea of what is going on, we need to include information about all of these decisions, even those pending. An analysis of "time to decision" or oftentimes called "events-based analysis" must include information about all decisions made and those that are pending.

In this situation, that includes all decisions about all discovered sites, as well as separate locations of an original single site. We need to look at the entire process, as was mentioned by the second panel and the first panel about the complexity. I agree with including those issues into the analysis.

Mr. Chairman, after that short statement, I would be happy to answer any questions.

[The prepared statement of Ms. Klemm follows:]

TESTIMONY OF REBECCA J. KLEMM, PH.D.

Mr. Chairman, I have a written statement which I ask that you include in the record of this hearing. I will briefly summarize my views and then answer any questions you might have.

Mr. Chairman: My name is Rebecca Klemm. I am the President of the Klemm Analysis Group here in Washington DC. Klemm is a statistical research and analysis company that has done a large number of studies assessing statistical work and performing analysis. I have served as a court appointed expert witness on statistical evidence and am currently a member of the National Conference of Lawyers and Scientists of the Association for the Advancement of Science (AAAS) and The American Bar Association, Science and Technology Section. I earned my PhD in statistics from the Iowa State University and have served on the faculty of the Georgetown University and Temple University where I taught statistics.

I am not an expert on the Superfund and in fact have never done any work for the EPA . I am here today because the Hon. Henry Waxman asked me to look at the methods used by GAO in the work they are reporting in their testimony today.I have only seen their testimony and have not had the opportunity to review their data in detail. However, reading their testimony, I believe that I can make some suggestions that would be helpful to their analysis and the work of this subcommittee.

The GAO's work reports their estimates of the time that it takes to list a hazardous site after it is discovered and to clean it up after its listed. The issue is whether the procedure they use to make their estimates is the most useful one.

One issue is that GAO only looks at those sites that were listed. If a site was discovered but not listed it does not come into their calculations of the average time.We do not really know the effect of this on their results. It could be that sites which are not listed are quickly decided or it could be that because they are less of a problem EPA takes longer to get to them.

Another issue is that GAO calculates times by averaging the time it took for cases closed in a particular year. Because the law was passed in 1980, there were fewer years available in the earlier period. So in 1982, there were only two years since the law was passed. It's a bit uncertain as to what the discovery dates for those early cases were. In other words, the further out you get the more years appear to be available for being included in the average.

If we calculate the number the other way, that is to say examining cases discovered in a particular year, the problem is presented in mirror image. There are fewer years available for averaging in the latter time period. So its not at all surprising that these two methods get different results.

Another issue is how GAO treats severity. It could be that time to completion is influenced by how serious the hazard is. But there is no analysis of this presented.

It's important for this work to specify how we are going to use these results: specifically what we are going to compare the result to. In fact, the Superfund determinations involve many decisions

and reviews. To get a good idea of what is going on , we need to include information about all of these decisions even those pending. An analysis of "time to decision" must include information about all decisions made and those that are pending. In this situation, all decisions about all discovered sites, as well as separate locations of an original, single "site".

Mr. Chairman: I would be happy to answer any questions at this time.

Mr. MCINTOSH. Thank you very much, Ms. Klemm.

Mr. Wholey, would you please share with us your testimony.

Mr. WHOLEY. Mr. Chairman, my name is Joseph S. Wholey. I am a professor of public administration at the University of Southern California and senior advisor for the evaluation methodology at the GAO. My work focuses on the use of performance measurement and evaluation to improve Government performance and policy decisionmaking.

I don't have a prepared statement. I would be happy to respond to any questions that you may have.

Mr. MCINTOSH. Thank you very much. Let me just ask you, I guess as the first question, do you agree with Ms. Klemm's comments on the study that was presented today.

Mr. WHOLEY. Mr. Chairman, I agree with the thought that there is no perfect measurement system, if that was part of Dr. Klemm's testimony. I think that we are always trying to weigh the feasibility and cost of different measures against the usefulness of the measures, which certainly was part of Dr. Klemm's testimony.

GAO, in my view, has used a reasonable, appropriate measurement scheme in its analysis. Other measures might also be appropriate. I could expand slightly, if you wish.

Mr. MCINTOSH. Yes, that would be great.

Mr. WHOLEY. In my view, and this is what I would hope to see coming out of the hearing today, the key to useful performance measurement is, first, to get some agreement between the agency and the Congress on a set of goals that we are working toward, and then for each goal, a reasonably small set of measures that will let us know if we are making progress or not.

A lot of time has been spent today on two of the goals of the Superfund, which might be called timely listing and timely completion, but the Superfund program has many goals. So the first step is to try to come together on what are the goals; what are we trying to accomplish around here? We heard about risk toward the end, I guess the next to the last panel, as you would classify it, or perhaps the last panel.

So the point, though, as Dr. Klemm had to say, is that we have to think about the use of the information. Is this performance information going to help manage the program better, help the program to perform better, help inform the Congress better as to what is happening in the program, help in your own decisionmaking process?

Mr. MCINTOSH. Now, GAO mentioned in its testimony that there were alternative means of analyzing the data that confirmed the results they achieved with the method they chose. Are you familiar with those?

Mr. WHOLEY. Well, I had seen some draft versions of their testimony for today, and over the last several days made some suggestions. I looked at the statutory deadlines for listing in SARA. I looked at the expectations that EPA had set for cleanup of sites in SARA.

Some supplementary analyses were done of a prospective nature, talking about the percent of time that those deadlines or expectations were being met. That is a prospective methodology that is included in the testimony that was given earlier today. Unfortu-

nately, I was not in the room, but I have read the testimony that was given earlier today and submitted to you.

Mr. MCINTOSH. Wouldn't you say, if the goal is to quickly clean up the sites and reduce the risk to the environment and health, that a measurement of the length of time it takes to clean them up would be important in determining whether you meet that goal?

Mr. WHOLEY. Well, as I said before, Mr. Chairman, I think there will typically be more than one appropriate measure. I think the measure you just mentioned, looking backward in time, is one appropriate measure. I think the percent of cases that are completed within some reasonable standard is another appropriate measure. And I have no doubt that there might be two or three other appropriate measures.

The worry, if we just keep adding more and more measures, however, is, how is the reader or the listener to process it all. That's why I say, for each goal, a few measures, and if possible, an agreement between Congress and the agency to use these measures and report back, in a consistent fashion, what is happening in terms of those measure for each goal.

Mr. MCINTOSH. Thank you.

Ms. Klemm, would you say there are multiple measures, as well, and that it depends on the goal as to which measure you look at?

Ms. KLEMM. Yes, basically. There are multiple measures. One can do retrospective measures, as GAO primarily does. One can do prospective measures, which some analysts call those cohorts. I think they all have value for presenting something about what is going on.

I do think, in some of the questions that were raised today about backlog and concern about backlog, that the more one looks retrospectively, the more the effect of the backlog can come into play. Particularly, if there is interest in backlog that has been reoccurring or preexisting across different administrations, then I think that information should be augmented and brought forward; if, in fact, one is to ultimately have a goal to understand how the length of time relates to what we can do to shorten it.

I think we all agree we want to maybe shorten anything that has a public health implication and environment implication. Just providing information or average of time to get to where we are, where, in fact, there could have been a hiatus, we don't know even, that things were stopped, doesn't really help to know what we can do to shorten the gap in the future.

Mr. MCINTOSH. But it would, if you demonstrated there was a lengthening of time, alert you to a problem, if your goal is to have rapid cleanup.

Ms. KLEMM. I do believe that looking only retrospectively will not tell you whether it is really lengthened, because it could be an artifact of the fact that you actually have calendar time that has gone forward, and you could be just measuring the length of more available calendar time and not necessarily due to the lengthening of the time to do the actual activity.

Mr. MCINTOSH. But if you have, as we do there with those slopes, where it continually takes a longer and longer amount of time to put a site onto the listing, and then that triggers another 10-year period of actual cleanup, it appears that each year, as you add a

new site to that, it looks as if you are going to, if history repeats itself, have a longer and longer period before you can expect the cleanup to occur.

Ms. KLEMM. It could, because you have more time that has elapsed. In the same kind of situation, let's suppose—I think on the chart that's on the left over there, is it 1986, the first year?

Mr. MCINTOSH. Yes.

Ms. KLEMM. There has only been 6 years from 1980 at that time. If, in fact—and I don't know whether this is true or not—but if, in fact, the easy cases were completed, they were completed right away. If the difficult or the multiple locationsites were kept partially completed, we don't even know that, but they keep going on. If they are still in the pipeline, partly because they are more complicated and they themselves take more time, they are going to show up, by the date when they were completed, looking as if it took longer to complete them.

Now, this is a flow process. There are new ones coming in every year, and there are ones getting completed every year. The tradeoff between the incoming new cases and the completed old cases aren't being told in that kind of a chart. It leaves out the impact of the original backlog. You can't see that. And you could get into that information if we were to look at when were they actually started on discovery and where were they at the beginning of each year? Had they even been begun? Were they in process? Were they partially completed? And so on.

I think that level needs to be looked at, and that's what I mean by more of the events-based. What is pending? Have they even been started? Because you could have the easier ones done first, like a lot of us do with a lot of our tasks when we are confronted with a choice of things to do, get some done, then you will look like you do them quickly, and the hard ones are still remaining. And somebody who then actually solves the hard ones might look like they took a long time.

Mr. MCINTOSH. So, in order to fully understand that, you would want to break it down into different components, is that what I am hearing?

Ms. KLEMM. Yes, that's correct.

Mr. MCINTOSH. If one of the components was pretty consistent in taking, say, 2, 2½ years, and another component you saw a significant fluctuation over time, then you would be more concerned about that component that fluctuated over time?

Ms. KLEMM. I would certainly want to look at it and understand why. This chart is too combined. We can't really, to me, use it for understanding what we might do and deciding whether, in fact, it really has taken more time, and then what we can do to shorten it if it has.

Mr. MCINTOSH. Then one of the things I think would be useful would be, as GAO moves to a final report, is to break out different subsets of that overall time and let us see which ones seem to have been expanding and the amount of time they take.

Ms. KLEMM. Yes. That's a recommendation that I would make.

Mr. MCINTOSH. My hunch is, you are going to find that sort of the final stages of action, where they are really cleaning up, have roughly about the same amount of time for them, but the pre-

paratory stages have been what has been expanding. But we need to see.

Ms. KLEMM. It may very well be. I don't know.

Mr. MCINTOSH. Which, I agree with you, would then tell you—that might be the source of reform, an area to look at to try to reform those stages which have been expanding.

Thank you very much. I have no further questions.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

I want to thank both of you for being willing to stay this long day and to give us your views on this issue.

Mr. Wholey, you work for the GAO, and you have had a chance to review their methodology and their conclusions.

Mr. WHOLEY. That's correct.

Mr. WAXMAN. The chairman repeated something that he had said earlier, that GAO found that it will take 20 years to clean up a site discovered today. Is that GAO's conclusion?

Mr. WHOLEY. Having heard GAO say no, I feel confident in saying no. I did come to the hearing about noon, however. I have not been here for the whole morning.

Mr. WAXMAN. Mr. Guerrero is here, if I'm saying something incorrectly.

Mr. WHOLEY. He did say no.

Mr. WAXMAN. I did not understand GAO to say that.

Mr. WHOLEY. I heard him say no.

Mr. WAXMAN. OK. Then I further understood that GAO did not make a determination that the reforms that have been put into place in the Superfund programs have been unsuccessful or successful. The chairman indicated he thought GAO has concluded that the reforms were unsuccessful.

Mr. WHOLEY. Mr. Waxman, if I could respond in general to your question.

Mr. WAXMAN. Sure.

Mr. WHOLEY. Because I would like to refer, again, to the testimony that was given on my left a little while ago, which I thought was helpful to getting us somewhere here. It occurred to me, in reading over the testimony and also in listening to Dr. Klemm, that the idea of adding in some intermediate measurement points, which the chairman has also been talking about, a couple that I noted down were what proportion of the cases are we reaching a reasonable—within a reasonable time, are we at least selecting a remedy, that would be one.

Further on down, at a quite later stage, within what proportion of the time are we at least initiating the cleanup action. So apparently EPA, at one point, perhaps they were a little too enthusiastic, had suggested that after the site was a listed that a good standard would be to get it cleaned up in 5 years. As I now understand it, just from reading the GAO testimony, which you have heard, they now think that perhaps a reasonable standard would be to clean the sites within 7 or 8 years from the time of listing.

Then I would wonder, couldn't we have—it's sort of like a set of milestones—have they at least selected a remedy.

Mr. WAXMAN. Well, I think what you are saying.

Mr. WHOLEY. Could I finish my response to you?

Mr. WAXMAN. Yes. Well, you're not really responding to my question, but I will let you finish, because you are being very instructive. But my question to you was, did GAO say they had enough information to judge that the reforms were a failure?

Mr. WHOLEY. I appreciate your reminding me of the question, because I might have missed responding to the question in my enthusiasm to outline, but it is responsive, however.

If the reforms are working successfully, and if we had standards or rough time estimates by which we would try to complete the different stages in a cleanup, then we would expect to see movement in a favorable direction on the proportion of sites listed for which we get the remedy selected in a reasonable time. That will be sensitive measure. You don't have to wait for the whole cleanup.

We would also expect to see favorable movement in the proportion of the sites, once listed, for which we have begun the cleanup in a reasonable time. Then, finally, we would have the proportion of the sites for which they did the cleanup in a reasonable time.

So I think it would be possible to introduce a more sensitive measurement system into the game that would have a chance to pick up the effect of the reforms of 1992 and 1994.

Mr. WAXMAN. Right. And then we would know whether they have succeeded or not.

Mr. WHOLEY. Well, we wouldn't know.

Mr. WAXMAN. We would have some idea of whether they are moving in the right direction.

Mr. WHOLEY. Yes, we would.

Mr. WAXMAN. Look, what is happening at this hearing is a GAO draft report that is being rushed to a congressional subcommittee. Now, that's very unusual, because usually you wait until there is a final report, because a draft report means that GAO is still getting input and evaluating the issue.

GAO has a draft report, and that draft report can be used for a political agenda. And the political agenda is to make a statement like, "It will take 20 years before a Superfund site that is listed today ever gets cleaned up." That's a political statement, not a statement of reality. Or, "The reforms have failed." That's not a statement that gives us an analysis of what's happening; it's a statement that can be used for a political point of view.

Now, if we want to evaluate what's really going on, we have, as both of you pointed out, measurements to make, points to evaluate. We have to look at the kind of cleanup that's involved, whether it's a complex cleanup or a simple cleanup.

That gets me to the point that I wanted to pursue with you, Dr. Klemm. Some Superfund sites, like an oil spill, are relatively simple to clean up. I say "simple," relatively speaking, but for some the techniques for cleanup are known and the extent of damage is limited. At other sites, damage is widespread, varies across the terrain, and the best technique for cleanups are unknown. Clearly, these sites will have quite different cleanup times.

Now, the GAO, in calculating averages, ignores the characteristic of the site. Is that appropriate? I think you would agree it is not, but I would like you to give your answer to it. Is it helpful?

Ms. KLEMM. I don't think it's particularly helpful for understanding whether improvement is being made and in understanding,

from a management and decisionmaking point of view, whether, in fact, there is something that can be done to shift resources, or whatever. You need to look at the parts and the complexity of the sites and/or their multiple locations.

We have heard already today from individuals who have the kind of technology to do cleanup that that does affect the length of time. Since length of time, by people who seem to know about those things, does potentially relate to the complexity, then we should look at that, the types of cleanup required, and break out by those characteristics into subgroups to see whether, in fact, there are some of them that are generating what on the surface might look like very lengthy cleanup times, and they are the most complex, possibly.

Mr. WAXMAN. Well, the GAO has disagreed with its own advice when it came to the drug approval evaluation, where they said that measurement shouldn't be based on the time of completion; it's less appropriate than one based on time starting from the origin of the approval process. But in this report they seem to think that—because both are flawed, and you indicated clearly that both are flawed, they give you a different measurement—they are free to choose whichever suits their purpose.

This is not the only subject where people want to look at the change in the duration of something over time. Some scholars studying poverty measure how long people are poor. Others measure spells of unemployment. Do any of these other disciplines use the kind of average used by GAO today in their report? How do these scholars measure and compare durations?

Ms. KLEMM. The issues that are being addressed here, in terms of time to clean up, are not unique to this application or this particular kind of a problem. Analyzing time to an event along a continuum of a process occurs in lots of places. How to handle those is not unique here.

The issue where you have a starting point and you have a truncated history is a very important concept to keep in mind, because the initial conditions, as some people might call them, can play a lingering effect into the future. So understanding what the backlog is, or initial conditions, or where you start, it is important to continue that into the analysis into the future.

That's where looking at events-based analysis, which in some areas they call survival analysis or proportional hazards analysis, allows you to watch the dropoff over each of the events from whence you started, taking into consideration the truncation at the beginning, with a backlog, location in time, and the truncation at the new end, which happens if you follow just a cohort. Those things are available as procedures and are used in lots of areas, having, I guess, originally been developed in biological and economic applications.

Mr. WAXMAN. Mr. Wholey, let me ask you this question. You recommend that an index of site complexity should be developed, and I think that's a very useful suggestion. But let's suppose for the moment that 1 year EPA spent all of its resources cleaning up simple sites, and the average cleanup time, using the GAO method, was 2 years. Then the next year they focus on finishing a few com-

plicated sites, and the average is 3 years, again using the GAO method.

Would it be reasonable to conclude from those numbers that cleanup is taking longer?

Mr. WHOLEY. Mr. Chairman—I'm sorry—Mr. Ranking Member.

Mr. WAXMAN. Call me Waxman. Call me Henry. Whatever.

Mr. WHOLEY. Mr. Waxman. I wouldn't call you Henry, but I would call you Mr. Waxman. Mr. Waxman, I think it would be valuable to include both averages for the total cases in the report and also averages for subgroups, such as easy sites, average sites, and more difficult sites.

Mr. WAXMAN. You are saying what would be appropriate, but would it be reasonable to conclude?

Mr. WHOLEY. Mr. Waxman, could I respond to your question?

Mr. WAXMAN. No, because I want you to answer my question.

Mr. MCINTOSH. Mr. Waxman, let the gentleman answer. If you don't interrupt him, he would be able to answer.

Mr. WAXMAN. I don't want to interrupt you except, at some point, the chairman is going to say, enough time. The question I asked you, given that hypothetical, would it be reasonable to say, when they have spent a short period of time on the easy ones and a longer period of time, on average, on the more complicated ones, that therefore they are taking a longer time overall to clean up sites? That doesn't sound reasonable to me. Does it sound reasonable to you?

Mr. WHOLEY. Would you like me to respond to your question, Mr. Waxman?

Mr. WAXMAN. As long as you've got my question clearly in mind, go ahead.

Mr. WHOLEY. I do. Right. Thank you for reminding me of the question.

Mr. Waxman, if the average cleanup took 2 years for one group, one time, and the average cleanup took 3 years another time, most people would say that 3 is bigger than 2.

Mr. Waxman, to continue my response, it would be most valuable for everybody to have a breakdown that would clearly reveal for all, which is the point you're getting at, that the two had been for easy sites, and therefore one shouldn't think that the three, which was, by definition, for more difficult sites, nobody should say that three was performing worse than two, because the degree of difficulty of the task had been obviously changed over that time.

Mr. WAXMAN. Well, again, to follow on this kind of logic, if we have simple and complex sites, let's assume we can know how long it should take to clean up a site and that EPA is meeting that expectation in every case. Now, 1 year they finish 10 simple sites that average 2 years, and then they have 5 complex sites that average 5 years. The GAO has calculated averages today that would say this is an average of 3 years.

Would it be a fair evaluation of EPA to say that they were taking too long to clean up simple sites?

Mr. WHOLEY. If I may respond, Mr. Waxman, it is the case that GAO has calculated year by year in as much detail as Mr. Waxman would wish.

Mr. WAXMAN. As I would wish?

Mr. WHOLEY. Yes, what time it had taken. For the purpose of summary testimony, GAO has averaged different years together, but there is no doubt that the calculations were made, say, for 1986, for 1987, 1988, 1989, 1990, 1991, and so forth, and all of those numbers are available, as well.

To come back to a point that you made earlier, Mr. Waxman, which appeared to be directed to GAO, could I respond to that point?

Mr. WAXMAN. Yes.

Mr. WHOLEY. You suggested that, at certain points, when GAO testified on uncompleted work, somehow or other GAO was rushing to testify.

Mr. WAXMAN. No, no. Excuse me. I didn't say that GAO was rushing to testify. I think the chairman of the subcommittee was rushing to have GAO testify because he had a report that would fit in with a preconceived notion of his evaluation of the Superfund program.

After all, this report says, if one looks at it only briefly or quickly, it's just taking a longer time for EPA to do the job of cleaning up the Superfund sites. That would seem to most people to say, "By God, here we've got a Superfund program, and it's taking longer for them to do the job." That would presume that years ago they were doing a better job, because they were doing it faster, and now, with those Clinton people in office, it's taking them longer.

So ordinarily we wouldn't have a hearing on a report until it was in final form, but the GAO report, in draft form, is now brought to us, I presume not at GAO's request but at the chairman's request.

Mr. MCINTOSH. Mr. Waxman.

Mr. WAXMAN. Yes, I yield to you.

Mr. MCINTOSH. Yes. What I'm hearing you saying is, that's not a criticism of GAO but a criticism of the Chair.

Mr. WAXMAN. You got it.

Mr. MCINTOSH. OK. Good. Let me put on the record, I've been very careful not to say this administration is doing a worse job than previous administrations. In fact, if you read carefully, in my opening statement there is plenty of blame to go around.

The problem is in the program and inherent features in the program which allow us not to do a good enough job for the American people in getting these sites cleaned up. I believe that this report is very telling about the nature of that problem. And I don't have any intention of saying that therefore this administration is to blame any more than any previous administration, but there is a flaw in the program that I think all of us should work together to try to fix.

Mr. WAXMAN. I thank you for that statement, and then I want to ask Mr. Wholey if, given the chairman's statement—and we both want to make sure that there is a Superfund program that's working—should we learn from this GAO report, as the chairman indicated, that it's going to take, on average, 20 years to clean up a site that is discovered today? And should we learn from this GAO report that the reforms are not successful?

So, therefore, we should do something to change the situation, because if those two statements are correct, that's pretty alarming

and might well lead us to certain kinds of changes. But if those statements are not correct, we might want to evaluate the whole problem in another way.

Mr. WHOLEY. Mr. Waxman, we don't have a GAO report in front of us.

Mr. WAXMAN. A draft.

Mr. WHOLEY. And it appears to me that Congress often has to take action before a GAO report will be finished. It just seems to me likely that the Congress, on certain occasions, will wish to have GAO testify on work in progress. We can't say that a GAO report says anything; it does not exist.

Mr. WAXMAN. You are really trying to slip around. The report is going to be final in a month. We know what the report pretty much says. We have an indication it's probably not going to be changed.

But given the report that we have now before us, if it were to be the final report and Congress were going to make some policy decisions on it, I don't think it's fair, and I think you indicated you don't think it's fair for us to read that report and conclude that EPA is going to take 20 years, on average, in the future, and that the reforms that are being put in place, which GAO specifically says in its testimony—Mr. Guerrero said in his testimony, he is not in a position to evaluate—we can't conclude because of that statement that the reforms have failed.

I want to know what we should get from this report so we can make good policy. Let me ask Ms. Klemm, do you think that we—you've been here all day, and you've read the draft report, and you've looked at the methodology—do you think that's a conclusion that we should take from this GAO report in this hearing?

Mr. MCINTOSH. Let me remind Mr. Waxman that we've asked these witnesses to come and talk about the methodology, not the conclusions of the report.

Mr. WAXMAN. Given the methodology. Mr. Guerrero is here. If he wants to come forward and tell us—because, as I understand—if I'm wrong, Mr. Guerrero, I do want you to speak up. GAO did not tell us, on average, it's going to take 20 years in the future. And GAO did not tell us that the reforms have failed. Mr. Guerrero, for the record, is sitting in the front row.

Mr. MCINTOSH. Mr. Waxman, let me read for you the paragraph in the draft report, so everybody can know what we're operating off of.

It says, "At its current pace," which is a key qualifier, "EPA will take, on average, at least 21 years to complete cleanups at non-Federal sites whose discovery was reported in 1995, 11 years for evaluating the sites before listing, plus at least 10 years for cleanups after listing. Completing cleanups of newly reported Federal sites would take at least 15 years. Furthermore, EPA's data show that the agency's efforts to expedite cleanups by applying the Superfund accelerated cleanup model, launched in 1992, are having no noticeable effect on reducing the total time required for Superfund cleanup."

That is the paragraph in the draft report that we are discussing.

Mr. WAXMAN. Mr. Chairman, reclaiming my time and to respond to that point, I think that's a misleading statement from the GAO report. Now, maybe it's GAO that's making the misleading state-

ments. I've accused the chairman, but maybe I shouldn't be so kind to the GAO.

Ms. Klemm.

Ms. KLEMM. I would not make that statement from the result of the two charts to the right. I don't think they tell me what it will take in the future unless I know something more about the sites, their complexity, and what really has been the genesis of the numbers in the two blue charts.

Mr. WAXMAN. Do you disagree with Ms. Klemm?

Mr. WHOLEY. Mr. Waxman, I think I would refer you to this point which I made earlier, and I would make it again, that GAO does have available year-by-year, looking forward in time, what proportion of sites, once listed, have been completed within a 5-year period. It would shed light on the issue that you're interested in having light shed on here.

Unfortunately, by definition, we're not going to spend much time worrying about sites discovered in 1995, but at least there are data for several different years, and I think they are such years as 1986, 1987, 1988, 1989, 1990, what proportion of the sites listed in that year were cleaned up within a 5-year period. At least that would show what the trend was, and it could help shed light on the question that you're trying to shed light on here.

Mr. WAXMAN. I appreciate what you're saying, but of course all those years were before the reforms.

Mr. WHOLEY. Fair enough. But I'm just saying that that method would allow us to also track the same thing for sites listed in 1991, 1992, 1993, and so forth.

Mr. WAXMAN. I want to conclude, Mr. Chairman, because you've been very kind in allowing this extra time. The last sentence on page 7 of the GAO report says, "The percentage of sites with 5-year completions increased from 7 percent for sites listed in fiscal year 1986 to 15 percent for sites listed in fiscal year 1990." So, in fact, GAO came to a different conclusion as to those previous years. It looks like one could read that sentence and be encouraged, things they are moving in the right direction.

Mr. WHOLEY. That's correct. That's correct. But that was before—yes, that is correct, Mr. Waxman.

Mr. WAXMAN. Well, Mr. Chairman, this has been a most interesting hearing. I don't know what value to put on the GAO report. I know GAO has always done quite good work in the past and has been helpful for policymakers. I'm going to have to look at this more carefully and evaluate it, as will others, to see whether this is going to be a helpful guide for us as we try to make policy decisions this year with the amount of information that we know and that the GAO has reviewed.

Thank you.

Mr. MCINTOSH. Thank you. I would look forward to additional information being provided by the administration and EPA, which they indicated they would be doing. In fact, if there is unanimous consent, we will hold open the record for 2 additional weeks for information from EPA and some of the other witnesses—I know Mr. Mica said he had some additional documents he wanted to put in—and complete the record that way.

Mr. WAXMAN. All Members?

Mr. MCINTOSH. Yes, all Members will be able to submit additional information and statements. I think that one key thing that has come up in this last panel is that we need to break down those charts and look at the different subcomponents, as well. I am confident that GAO will do a good job in analysis of that.

Thank you both for participating and helping us out with this. At this point, the committee will stand adjourned.

[Whereupon, at 2 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

November 27, 1996

The Honorable Christopher S. Bond
Chairman
Committee on Small Business
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In light of recent interest about EPA's plans to include small entities in the Agency's National Ambient Air Quality Standards (NAAQS) rulemakings, we are writing to inform you about our joint plans to involve small entities in the process of setting and implementing any new NAAQS for ozone and particulate matter.

As you may be aware, there continues to be disagreement over the question of whether or not rulemakings setting or revising the NAAQS are subject to the requirement of the Small Business Regulatory Enforcement Fairness Act (SBREFA) to convene a Small Business Advisory Panel. Fortunately, we do not need to settle that issue to ensure that small entities have the opportunity to provide their comments and advice regarding the NAAQS. However the legal question is resolved, we nonetheless intend to do everything we can to fulfill the spirit of SBREFA on a voluntary basis.

After the proposal of new air quality standards for ozone and particulate matter, EPA, the Small Business Administration, and the Office of Management and Budget will hold two separate panel exercises to collect comments, advice and recommendations from representatives of small businesses, small governments, and other small organizations. The first panel, soliciting comments on the new standards themselves, will be held immediately after proposal. This panel will be carried out using a panel process modeled on the "Small Business Advocacy Review Panel" provisions in Section 244 of SBREFA. The second panel, covering implementation of the standards, will be held a few months later. EPA is also adding a number of small-entity representatives to its Federal advisory committee focusing on NAAQS implementation; we expect the small-entity advice from this committee will help the aforementioned implementation panel accomplish its purpose.

In summary, EPA is taking small-entity concerns seriously in these rulemakings. EPA's Air Office has long had a policy of finding ways to ease the burden on small entities, and we look forward to working with you to do an even better job in the future.

Mary Nichols
Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency

Jere Glover
Chief Counsel for Advocacy
U.S. Small Business Administration

cc: Sally Katzen, OMB
Art Fraas, OMB

STATEMENT OF HENRY L. HENDERSON
COMMISSIONER, CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT

BEFORE THE
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

April 16, 1997

My name is Henry L. Henderson and I am the Commissioner of the Chicago Department of Environment. This statement is being submitted on behalf of the City of Chicago in response to the proposal of the U.S. Environmental Protection Agency (EPA) to adopt new air quality standards for ozone and particulate matter.

EPA has proposed new air quality standards to "protect public health." Central to the City's mission is protection of public health. The City agrees that cleaner air is needed. However, in our view, EPA's proposal will not serve the public health but will threaten it. Accordingly, the City was unable to support EPA's proposals.

I. The City supports cleaner air but not at the expense of other aspects of public health.

Protecting the public health of citizens in this region is a primary responsibility and a chief concern for the City. EPA maintains that its proposed air quality standards are set at levels that will "protect public health", but we question how this can be given that EPA's *only* considerations in arriving at those standards were the clinical and epidemiological effects of exposure to the particular pollutant. Equally important to the process of setting standards that "protect public health" is consideration of whether those standards safeguard other critical aspects of public health such as access to effective health care including prenatal care, good nutrition, viable housing, personal security, as well as freedom from poverty and inequality. Policies or programs that undercut these essential conditions serve only to jeopardize or diminish public health.

The City has serious and well-founded concerns, based on experience, that adoption of EPA's proposals may have these counterproductive impacts. Under the current air quality standards, the City (including the surrounding six-county metropolitan area) is designated "severe nonattainment" for ozone. By virtue of this designation, the City is subject to a regulatory framework that imposes a host of control measures upon this area -- measures that primarily target industry and our regional economy. They include stringent limitations on the construction of new and expansion of existing manufacturing facilities; a complex and lengthy permitting process; the installation of costly emission control equipment; a need for high emissions offsets; strict transportation control measures; and the threat to industry of monetary penalties should the area fail to reach attainment milestones. In essence, these measures seek to improve the City's air quality on the backs of the citizens and businesses located in this geographic region; they punish an area and its people rather than the problem itself.

While these measures may have played a role in the improvements to air quality we have achieved in the past, they have cost the City dearly in terms of public health. Since these measures took effect, the City has experienced substantially inhibited growth of large commercial and industrial manufacturing facilities. To avoid the New Source Review program, the few expansions and new constructions that have occurred in this area since 1989 have all intentionally limited their own growth or facility size to result in a level of emissions of less than 25 tons.[1] In fact, many businesses have even left the City for areas that lie beyond the nonattainment area, where the regulatory requirements are far less burdensome.[2]

This phenomenon has resulted in serious and detrimental effects on the public health of City residents, and in particular, on the health of those individuals who are economically disadvantaged and those who reside in the inner city. The lack of growth in commercial and industrial facilities has translated into an increase in job loss (particularly for blue-collar workers) which includes a loss of health insurance coverage and other job-related benefits; an increase in the number of abandoned, contaminated brownfield sites which means an increase in the number of residents who are now exposed to them; a loss of small business and other services, including health care facilities, to serve area neighborhoods; loss of personal security; and a general deterioration of infrastructure in the urban core.

Residents in the nonattainment area surrounding the City and residents in the areas that extend beyond that have fared no better in terms of public health. The urban sprawl fueled by these control measures has meant an increase in greenfields development, construction of additional highways and roads, astronomical increases in vehicle miles traveled, and degradation of air quality, water quality, and other natural resources in those areas. The increased congestion and vehicle emissions that accompany such sprawl have broadened the scope of the geographic area and the number of persons now subject to poor air quality, and has made vehicle emissions our primary source of ambient air pollution, thereby counteracting any progress we might otherwise expect to result from our other pending efforts to improve air quality.

The City is gravely concerned that adopting new and tighter air quality standards will only compound these negative effects to public health, while making only minimal headway, if that, in improving air quality. EPA's proposals offer no reason to believe otherwise.

Moreover, these anticipated negative impacts of the proposed standards conflict or undermine several other important EPA policies and programs intended to protect public health and the environment including:

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[1] Illinois Environmental Protection Agency.

[2] See Illinois Manufacturers Directory, 1997. The City acknowledges that other factors may play a role in a company's decision to relocate, but it cannot be disputed that the complexities, uncertainties, and high costs of compliance associated with EPA's current regulatory framework are often a decisive factor. See *"Four Plant Closings Deal Major Blow to Aurora"*, Crain's Chicago Business, August 2, 1993, p.32; *"Despite Lean Times, Food Industry is Keeping Some Brokers in Fat City"*, Chicago Tribune, May 3, 1992, p.1 (real estate); *"A Clean Air Crackdown; California-Style Cutbacks Are Headed Here"*, Crain's Chicago Business, March 2, 1992, p.15.

• EPA's Brownfields Action Agenda

EPA has committed significant resources and efforts to its Brownfields Action Agenda, now a critically important nationwide program which serves to improve the environment and the economy by spurring the cleanup of contaminated and abandoned industrial sites located primarily in inner cities. The adoption of tighter air quality standards that penalize industries located in those areas is in direct conflict with that visionary program, as well as similar locally-implemented brownfields efforts currently underway.

•Environmental Justice

The negative public health effects expected from tighter standards threaten to perpetuate environmental injustices. As explained above, the individuals most adversely affected under the current standards have been inner city residents--a group comprised of a disproportionately high number of minorities and economically-disadvantaged persons. The adoption of tighter standards threatens to continue disproportionately imposing these negative health effects on that same group.

•Containment of Urban Sprawl

Based on the negative environmental consequences that stem from urban sprawl, EPA has just recently recognized the need to evaluate what role, if any, its policies and programs play in contributing to that phenomenon. The current air quality standards have fueled urban, even suburban, sprawl. More stringent standards can only be expected to intensify that.

II. New air quality standards threaten the City with a loss of funding for existing local air quality improvement programs that protect public health.

EPA's proposals for the new ozone and PM standards do not include proposals for the implementation of those standards. The Agency is currently developing implementation strategies--a costly and lengthy process which it expects to finalize in 1999. The strategies that stem from that process are not expected to be put into practice until several years after that. EPA has indicated it will take between five and eight years from now.[3]

For the time being, EPA has proposed an "interim implementation policy" under which current implementation measures and programs would remain in effect until new strategies are put into place. Thus, while the proposed air quality standards would take effect in July 1997, the current counterproductive implementation policies and programs that apply to individual localities would remain in effect as the means for achieving those new standards for the next five to eight years.

Adopting tighter air quality standards has the immediate effect of moving the "attainment" benchmark further away for individual localities. The Clean Air Act specifies attainment milestones and mandates sanctions on localities that fail to achieve them. Sanctions include more restrictive emission offsets (i.e., a construction ban), then a loss of highway funding, and finally, the imposition

[3] 61 Fed. Reg. 62145 (Nov. 29, 1996) and 61 Fed. Reg. 65752 (Dec. 13, 1996).

of a Federal Implementation Plan (FIP). When a FIP is imposed on a nonattainment area, that locality loses funding and control of its own current air quality improvement programs.

By setting tighter standards and maintaining the current implementation strategies that fail to address today's problematic sources of emissions (thereby making attainment more difficult to reach but not offering the tools needed in that effort), EPA is only making the threat of punitive sanctions more of a reality. In the event that the sanctioning process takes effect, the public health of our citizens is clearly threatened: the City's economy and the public health of our citizens can ill afford the consequences of another construction ban similar to that imposed here in the late 1980s and we should not have to be faced with the threat of losing funding to support the air quality improvement programs we have worked hard to make effective.

Currently, the City manages successful local air quality improvement programs that include local compliance and enforcement initiatives, projects to establish and promote the use of alternate fuels and alternate fuel vehicles, a voluntary ozone episode program that encourages individual actions to reduce the severity of ozone on forecasted ozone exceedence days, and an emissions reduction credit bank. These programs, by virtue of the fact that they are tailored to address the City's own particular needs, are critical in our challenge to improve air quality. Threatening their very existence by making attainment more difficult to reach and not providing the means to reach it is flatly unfair. Moreover, it will not help us achieve the cleaner air and improved public health we need and deserve.

III. Rather than adopting new air quality standards, EPA should focus its efforts and limited resources on effective actions and activities that will improve air quality.

In order to achieve the clean, healthy city that Chicago's residents want and deserve, we believe that EPA should be focusing its efforts and limited resources on proven methods, actions, and activities that will safely and effectively improve our nation's air quality rather than engaging in a debate over the level at which air quality standards should be set and undertaking a costly implementation process. Accordingly, the City's March 12 comments to EPA urged the Agency to abandon the standard-setting approach and adopt instead a visionary, common-sense program that will immediately deliver improved air quality.

We recognize that EPA has traditionally utilized air quality standards as the vehicle for driving the desired improvements to air quality. However, the Agency itself has recognized in the case of other environmental issues, such as the remediation of contaminated property, that a departure from the traditional approach may be necessary to achieve the desired results. Indeed, EPA's proposal to improve air quality by setting new standards represents a disappointing retreat from that recognition.

While the goals of cleaner air and improved public health are critical goals, the City believes they cannot be justified if attaining them requires residents in certain localities to sacrifice their own public health. Clearly there are other more effective and more innovative approaches to improving

air quality than adopting new air quality standards, and there are approaches that do not pose the risks to public health that standards do. We have suggested that EPA focus its resources where there is the greatest opportunity for the greatest benefit and make a substantial effort to partner with and encourage other federal agencies to initiate and support common-sense measures that will result in improvements to air quality and public health.

In particular, we recommended that EPA undertake the following:

- **Invest significantly more resources in research and development of clean technologies and clean products.** The resources EPA would otherwise require for monitoring and implementation activities associated with its proposed standards would be far better utilized if they were directed toward developing cleaner technologies and cleaner products. For example, every time a company manufactures a new light bulb or a new motor that is more energy efficient or has a lower emission rate than its predecessor, air quality is slightly improved.

- **Promulgate uniform national standards for the manufacture of consumer products so that individuals everywhere enjoy the same protection when using such products.** EPA should require uniform national standards for the manufacture of consumer products. Under the Agency's current standards, certain products sold in California must be "cleaner" than if they were sold elsewhere. Thus, residents in other states do not enjoy the standard of protection that California residents enjoy. This is patently unfair; individuals everywhere are entitled to enjoy the same level of protection from adverse health effects.

- **Offer substantial support for increased funding for transit systems, especially in large cities.** Use of public transit in place of automobiles is one of the best means we know of to improve air quality. Yet our nation's transit systems, especially those in older cities like Chicago, are not being utilized to the extent they could be due to the fact that they are severely under funded. Far from being able to enhance the system we have in order to serve residents not currently served, we are struggling to merely maintain the system we have. EPA should work in conjunction with and vigorously support cities that are in desperate need of these resources. The pending reauthorization of the Intermodal Surface Transportation Efficiency Act offers an ideal opportunity for this.

- **Support Mayor Daley's proposed tax deduction for public transit.** Chicago Mayor Richard M. Daley has proposed a federal tax incentive that would allow individuals to claim as a federal tax deduction the cost of commuting to and from work on public transit. EPA should be actively supporting this proposal and other tax incentive proposals that similarly encourage cleaner air.

- **Convene an interdepartmental take force to formulate a comprehensive federal approach to improving air quality.** There are certain inconsistencies among the various programs of EPA, USDOE, and USDOT that will remain as barriers to improving air quality if they continue to remain unaddressed. Specifically, a task force should be convened to address the lack of coordination with respect to transportation planning and funding, clean energy, alternate fuels, and improved air quality.

- **Invest heavily in resources and proven programs that target emissions from mobile sources.** In light of the fact that mobile sources, not industry, are now the largest contributor to poor air quality, EPA should be actively engaged in a partnership with U.S. Department of Energy to develop a thriving market for alternate fuels and alternate fuel vehicles. Also, EPA should promulgate uniform emission and fuel standards for vehicles regardless of the locality in which they will be sold. The damage to air quality done by vehicle exhaust that is emitted as dirty mobile sources cross state boundaries and pass through the nonattainment areas must be addressed. Only the federal government has the legal authority to control emissions from these sources.

- **Ensure consistency and coordination among EPA's own internal programs and policies.** As discussed above, EPA's own programs and goals have sometimes proven to be at odds with one another. The Agency should focus on coordinating among its programs to implement a holistic, more effective approach. Measures to accomplish one goal will remain ineffective or counterproductive so long as other pending measures conflict with that goal.

- **Develop incentives to encourage employers to create clean jobs.** EPA's current regulatory framework encourages elimination of "dirty" jobs, especially in certain localities, but offers no incentives for the creation of clean jobs. Since job loss directly affects public health, EPA should develop programs that encourage employers to hire individuals for clean jobs. For example, EPA could offer incentives to bus manufacturers for hiring individuals to build clean-burning buses. This would benefit both air quality and public health.

- **Dedicate resources for widespread, effective public education efforts on those issues proven to impact public health and air quality.** Evidence shows that indoor air quality, radon, improper handling of consumer products handling, and use of woodburning fireplaces--to name just a few--all contribute to poor air quality and have immediate adverse impacts on human health. It is critical for EPA to assist in educating the public on both the health and air quality impacts that stem from these.

- **Insist that clean air efforts are not undermined in the restructuring of the electric industry.** The restructuring of the electric industry currently underway within the federal and state governments is aimed at the creation of a national market in energy competition. The EPA must be actively engaged in this effort to assure that the resulting market is attentive to the air quality needs of the nation, and that "dirty fuels" do not receive an unfair competitive edge over clean fuels with the emerging national energy market. This consideration underscores the need for the creation of an interagency clean air task force called for above, which must include EPA and the U.S. Department of Energy.

CONCLUSION

The City of Chicago has called for a refocussing of the EPA's approach to the challenge of improving the nation's air quality. The unintended effects of the current approach, which stand to continue if the Agency's proposed air quality standards are adopted, threaten to further undercut the health and well-being of our urban centers and their regions. A genuine improvement of public health can only be achieved through adoption of the approach outlined above.

Respectfully submitted,

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